INFORMATION

FOR THE

Earl of Sutherland,

AGAINST THE

Earl of Crawfurd.

EDINBURGH,
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The Earl of *Sutherland.*

AGAINST

The Earl of *Crawfurd.*

THE Earl of *Sutherland* having inſiſted in a Declarator of Precedency againſt the Earl of *Crawfurd*; concluding, That it ought to be found and declared, by Decreet of the Lords of Seſſion, That the Purſuer's Predeceſſors did enjoy the Title and Dignity of *Earl of Sutherland*; and that the ſaid Earldom and Dignity did deſcend to the Heirs whatſomever; And that thereby *Elizabeth*, thereafter Counteſs of *Sutherland*, being Heir of Line, had right to ſucceed to the Earldom and Dignity; And that the ſaid Title and Dignity is deſcended to the Purſuer, from *William* Earl of *Sutherland*, who lived in 1275, by the ſaid Counteſs *Elizabeth*, of whom the Purſuer is alſo lineally deſcended; And that the ſaid Purſuer and his Succeſſors, Earls of *Sutherland*, have right of Precedency, of all Earls whoſe Titles are after the ſaid Year 1275; And eſpecially of the Earl of *Crawfurd*, whoſe Predeceſſor was deſigned *David Lindſay Miles* in the 1390; And it being ſo found and declared, The Defender and his Succeſſors ought and ſhould be decerned to deſiſt from Aſſuming or Claiming, Enjoying or Poſſeſſing the Precedency of the ſaid Purſuer, or his Succeſſors, in Parliaments, Meetings or Con-

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Conventions of Eſtate, or in any other Meeting, or on any other occaſions whatſomever.

THIS Proceſs being tabled before the Parliament *per modum querelæ*, at the inſtance of the deceaſt Earl of *Sutherland*, craving to be ranked in the Rolls of Parliament according to his Antiquity; His Majeſty and the Eſtates of Parliament, did remit the Queſtion to be decided ſummarly before the Lords of Seſſion: And the ſame coming in, conform to the ſaid Warrant, and by vertue of a Transferrance at this Earl's inſtance; the Earl of *Sutherland* for inſtructing the Concluſion of his Summonds, produced the Writs following:

1*mo*. AN authentick Agreement, betwixt *William* then Earl of *Sutherland*, and *Archbald* Biſhop of *Caithneſs*, on the one and other parts, concerning a daily queſtion about the Property of the Lands of *Skelbo*, *Pronſie*, *Thorbolt* and *Kinnald*, and others; betwixt *William* of pious Memory, Earl of *Sutherland*, Father to the ſaid *William* then Earl of *Sutherland*, and the three preceeding Biſhops of *Caithneſs*, *Gilbert*, *William* and *Walter*: Which Agreement bears, *That certain Earls and Barons had interpoſed for componing the* Difference, *betwixt the Biſhop of* Caithneſs *and his Succeſſors*, & prædictum nobilem Gulielmum comitem & ejus hæredes, *and had determined that certain of the Lands ſhould remain to the See of* Caithneſs, *and the reſt to the ſaid Noble Earl and his foreſaids, with the Patronage of a Chaplanry in the Kirk of* Dornoch, *at the Altar of St.* James, *to ſay Prayers for the Souls of the Earl and his Predeceſſors and Anceſtors; To which Chaplan, the the Biſhop was bound to pay five Merks yearly*, as the ſaid Agreement dated *Decimo Kalendarum Octobris Anno Domini Milleſimo Ducenteſimo ſeptuageſimo quinto*, at more length bears. And it is obſervable, that the Lands of *Thorbolt*, which by this

this Agreement, are left to the Earl of *Sutherland*, are by a ſucceeding *William* Earl of *Sutherland*, given to his Brother *Nicolas*, to be held of the Granter; and that theſe Lands, and the Lands of *Pronſie* and others, with the Patronage of the Chaplanry reſerved to the Earl, are in the poſſeſſion of his Family to this day.

And it is alſo obſervable, that this Agreement mentions, the Earl's Predeceſſors and Anceſtors; and that there had been a Controverſy betwixt the Earl's Father, and *Gilbert*, *William* and *VValter* Biſhops of *Caithneſs*: Which clearly proves that part of the Earl of *Sutherland*'s Concluſion, *viz.* That his Predeceſſors were Earls before the 1275: For by our Chronologies and Hiſtories, eſpecially obſerved by *Spotiſwood*, the ſaid *Gilbert* died at *Scrabſter*, in the 1245: So that the *William* Earl of *Sutherland* who had a Conteſt with him, muſt needs have been older than that date, and it is very preſumeable was amongſt the firſt Earls of this Kingdom, ſeeing we find them, in theſe early Times, contending with the Biſhops of *Caithneſs*, and eſpecially with *Gilbert* Biſhop of *Caithneſs*, who appears to have been a Man of very great Authority, and as *Spotiſwood* ſays, Bold and Couragious; and within an Hundred Years after, we find the ſame Family matched with *Margaret*, Siſter to King *David* the *Bruce*.

In Matters of this Antiquity, Hiſtory cannot be refuſed as a Witneſs; and we find within a few Years of this Agreement, the Earl of *Sutherland* mentioned by *Prinn*, in his Hiſtory of *Edward Longſhanks*, in the Year 1296

In the Year 1320, there was a Famous Letter writ to the Pope, by the Nobility and Gentry of *Scotland*; wherein *William* Earl of *Sutherland* is mentioned as an Earl at that time a Signer; and wherein alſo, *Gilbert de Hay* Conſtable of

Scot-

Scotland, *Robert de Keith* Mariſchal of *Scotland*, and *David de Lindſay*, are alſo Signing.

In the 1330, *Kenneth* Earl of *Sutherland*, is found deſigned Son to *William* Earl of *Sutherland*: And there is extent anauthentick Renunciation, by the ſaid *Kenneth* Earl of *Sutherland*, Son to *William* Earl of *Sutherland*, of all Debates and Controverſies, which had been betwixt him and his Progenitors, and *Rynald de Moravia*, Son to *Aydan de Moravia* of *Colbin*, concerning certain Lands belonging to the ſaid *Kenneth* in *Sutherland*: Which Agreement is dated at the Chapel of St. *Andrew* in *Golſpie*, the next day after the Feaſt of St. *Nicolas*, in the Year 1330. And *Forden* makes mention, That this *Kenneth* was ſlain in the Battel of *Halydoun*-Hill, in the Year 1333.

The next Earl of *Sutherland*, who appears by Writs produced, is *William*, who Married the Lady *Margaret*, Siſter to King *David* the *Bruce*, and there is found in the Records 1347, a Charter by King *David* in theſe words:

DAVID, *Dei gratiâ Rex Scotorum*, *Omnibus probis hominibus totius terræ ſuæ*, *ſalutem*; *ſciatis nos conceſſiſſe*, *& hac preſenti cartâ noſtrâ confirmaſſe*, *dilecto genero noſtro Wilielmo Comiti Sutherlandiæ & Margaretæ Sponſæ ſuæ ſorori noſtræ chariſſimæ*: *Quod ipſi & hæredes inter ipſos legittimè procreandos habeant*, *teneant*, *& poſſideant de nobis & hæredibus noſtris*, *totum Comitatum Sutherlandiæ*; *in adeo liberam regalitatem in perpetuum*: *Cum omnibus & ſingulis Libertatibus*, *Commoditatibus*, *Aſiamentis*, *juſtis pertinentiis & liberis conſuetudinibus*, *quæ ad liberam regalitatem ſpectare noſcuntur*, *in omnibus & per omnia*; *ſicut aliqua regalitas*, *per totum regnum noſtrum liberius poſſidetur ab aliquo*, *ſeu tenetur*; *In cujus rei teſtimonium preſenti cartæ noſtræ ſigillum noſtrum precipimus apponi teſtibus*, *Roberto Seneſcallo*

neſcallo Scotiæ, Joannæ Rannolph Comiti Moraviæ, Domino Wallis, Annandiæ, & Manniæ, conſanguineo Patricio de Dunbar Comite de Marchiâ, Mauricio Comite de Stratherne, & Thomæ de Carnocho Cancellario noſtro, militibus; apud Lanerk decimo die Octobris, Anno Regni noſtri decimo ſeptimo.

FROM this Charter it is evident, 1*mo*. That the King does not creat, but Deſigns *William* Earl of *Sutherland*. 2*do*. He erects the Earldom of *Sutherland* into a Regality, *Wilielmo Sutherlandiæ Comiti, & Margaretæ ſponſæ ſuæ, ſorori noſtræ chariſſimæ, quod ipſi & hæredes inter ipſos teneant, &c.*

AND beſides that it is eaſily preſumable, That *William* Earl of *Sutherland* was the ſucceſſor of *Kenneth*, who died but 14 years before, as has been ſaid. For further illuſtrating the Connection betwixt theſe two Earls, it is to be obſerved, That he bears the Name of *William*, which appears to have been uſed in the Family, and was the Name born by his Grand-father and Grandſire. 2*do*. The Lands of *Thorbolt* are mentioned in the Agreement, between *William* Earl of *Sutherland*, and the Biſhop of *Caithneſs* above-cited in this 1275: Wherein theſe Lands of *Thorbolt*, are clearly provided, to belong to *William* then Earl of *Sutherland* and his Heirs. Now the Lands of *Thorbolt* are given off by the ſaid *William* Earl of *Sutherland*, in the 1364, to *Nicolas Sutherland* predeceſſor to the Lord *Duffus* his Brother, as appears by a Charter of Confirmation granted by King *David*, containing the full Tenor of the Charter granted by the ſaid *William* Earl of *Sutherland*, to *Nicolas Sutherland* his Brother. And 3*tio*. From the ſaid Charter it alſo appears, not only, that the ſaid *William* was Heir to *William* his Grand-father, but that the Sirname of the Family, was taken from their ancient Poſſeſſion and Inheritance, (which is a notable mark of Antiquity in this Nation) in as far as *Nicolas* his Sir-

Sirname is expreſſed to be *Nicolas Sutherland* Brother to the Earl of *Sutherland.*

To conclude this period, which runs in effect from the 1245 and upward, to the 1364, there is no conſiderable number of years, in which the Earl of *Sutherland* is not mentioned, in Charters, Records and Hiſtories: Nor is it leſs evident, that they were poſſeſſors of the ſame Lands, from whence they took their Sirname and Title of Dignities; and therefore any Man of common Ingenuity, moderarly verſed in the Antiquities of this Kingdom, and the Deſcent of Lands and Dignities, muſt agree, that it is manifeſt, that theſe Earls did deſcend from one another, and enjoy the Earldom of *Sutherland* by Right of Blood.

The next period of the Hiſtory of the Earl's Titles, is from the 1364; which is the laſt Year, wherein the above-mentioned *William* Earl of *Sutherland* is mentioned to the 1514, when Counteſs *Eliſabeth* was ſerved Heireſs.

In this Period, the firſt is, *John* Earl of *Sutherland*, Son to Earl *William*, of whom the Extracts from the Records in the Tower of *London*, make mention, lately publiſhed by the ingenious Mr. *Rhymer* in his Letters to the Learned and Reverend Biſhop of *Carliſle*; wherein he deſigns the ſaid *John*, Siſter-Son to the King, and gives a particular Account of the Treaties betwixt the two Kingdoms, for the Ranſom of King *David* the 2d. then Priſoner in *England*; and amongſt other Particulars he tells us, "That in the 1351, the Ho-"ſtages given, were *John*, Son to the Great Stewart of *Scot-*"*land*, *John de Dunbar*, Son to the Earl of *March*, *John* Son "and Heir to the Earl of *Sutherland.* And in the Year 1357, when the Peace was concluded, "The hoſtages given were, "*John* Son to *Robert* the Great Stewart of *Scotland*, *William*

"Son

" Son and Heir to the Earl of *Roſs*, *John* Son and Heir of " *William* Earl of *Sutherland*. And in the end of theſe Letters, the words of the Authentick Record, are ſet down, giving an Account by whom the ſeveral Hoſtages were kept: " And that *John* Son and Heir to the Earl of *Sutherland* " was ſent to *London* [*Devers le Chancelier*] And by the by it's obſervable, that there being a former Treaty in the year 1351, the Hoſtages are ſet down in this order, " *John* Son and Heir to the Great Stewart of *Scotland*, *John de Dunbar* Son " and Heir to the Earl of *Dunbar*, *John* Son and Heir to the " Earl of *Sutherland*, *Thomas* Heir to the Earl of *Wigton*, " *James de Lindſay* Son and Heir of *David de Lindſay* Knight.

THIS *John* being thus deſigned, in the time of Earl *William*, is in Law preſumed to have ſurvived his Father, which is ſo inconteſtible in the Civil Law, and in the Principles of Nature, that if they had both periſhed in one Ship, yet the Law preſumed the younger to have ſurvived; and upon that Ground and common Fame, *William* Earl of *Sutherland*, who died in the days of King *Alexander* the III. is deſigned *Atavus* to *Nicolas* Earl of *Sutherland*, which is eaſily computed thus, Nicolas *Filius*, Joannes *Pater*, Gulielmus *Avus*, Kennethus *Pro-avus*, Gulielmus *(qui contractum iniit cum Epiſcopo* Catenenſi) *Abavus*, Gulielmus *ejus Pater*, *in eodem contractu nominatus Atavus*.

JOHN was ſucceeded by Earl *Nicolas*, who had many unfortunat Quarrels with his Neighbours, and of whom the Memory is yet retained in the Neighbouring Country by Tradition; of whom deſcended a Family of *Sutherlands*, called the *Sutherland* of *Dilrite*; and this *Nicolas* is expreſly mentioned in the Service of *John* Earl of *Sutherland*, in the 1630, as has been ſaid.

Both *John* and *Nicolas* appear to have died before the 1389, at which time we find *Robert* Earl of *Sutherland* mentioned in an Agreement, which was made betwixt *Eupham* Counteſs of *Roſs*, and *Alexander* Earl of *Buchan* her Husband, at the Interpoſition of the Biſhops of *Murray* and *Roſs*: In which Agreement, the ſaid *Robert* Earl of *Sutherland* is deſigned *Magnificus vir* Robertus *Comes* Sutherlandiæ, and becomes Surety, for the performance on the part of *Alexander Stuart* Earl of *Buchan*. And here it is to be obſerved, That altho the Earls of *Sutherland* did deduce their Antiquity from no higher ſource, than *Robert* Earl of *Sutherland*; yet it is ſufficient *ad victoriam cauſæ* againſt the Earl of *Crawfurd*, whoſe Predeceſſors were not created Earls till about the year 1399, as ſhall be made appear afterwards.

Of this *Robert* Earl of *Sutherland*, there is a Charter extant, granted to *Kenneth Sutherland* his Brother, reſerving expreſly to himſelf the Mill of *Dunrobin*, which remains with his Succeſſors to this day; and the Lands diſpon'd, are to be held as freely, as any other Lands held of the Earl, within the Earldom of *Sutherland*;

The ſame *Robert* receives a Reſignation by *Nicolas Sutherland* of the Lands of *Thorbolt*, in favours of *Henry*, Son to the ſaid *Nicolas*, and upon that Reſignation, gives a Charter to *Henry*, deſigning him *Conſanguineus*, which Charter is mentioned in a ſubſequent Charter of Earl *John*'s.

To the time of *John*, *Nicolas* or *Robert*, alſo belongs what *Buchanan* mentions about the year 1388, *viz.* That the Earl of *Sutherland* was one of the Leaders of the Army that went into *Englaud* at that time, and *Dugdail* in his Baronage of *England*, *Vol.* 1. *p.* 449. acquaints us, That *Thomas de*

Gray

Gray had a Charter in the 19 of *Edward* III. of a Warrand through the Lordſhip of *Fentoun*, &c. on the narrative that he routed the Earls *March* and *Sutherland*, upon their Invaſion in the *North*, when *Edward* III. was at the ſiege of *Tournay*.

From theſe Writs which concern Earl *Robert*, it's obſervable, that he enjoyed the ſame Lands in Superiority as the preceeding Earls, that his Family bore the ſame Sirname; and therefore his Charter to his Brother deſigns him *Kenneth Sutherland*, and that he was of the ſame Blood, ſeing he deſigns *Henry* Son to *Nicolas*, who was Brother to Earl *William*, *Conſanguineus:* And it is to be remembred, That Earl *Robert* his Charter to *Kenneth* his Brother, is *in Anno* 1400, and is confirmed by the Duke of *Albany* Governour of *Scotland*, in the 1408.

John Earl of *Sutherland* ſucceeds to *Robert*, and there is extant a Charter of his, dated at *Ponfret* in *England*, 12 *July*, 1444: In which he makes mention of the Reſignation made in the hands of Earl *Robert*, by *Nicolas Sutherland de Caſtello de Duffus* of the Lands of *Thorbolt*, and of the Charter granted by the ſaid Earl *Robert*, to the ſaid *Henry* Son to the ſaid *Nicolas*; and that now *Henry* being deceaſed, *Alexander* had ſucceeded; and therefore he confirms his Predeceſſor's Charter, and grants a Charter to the ſaid *Alexander*. And thus the Line of the Superior and Vaſſal was continued down from Earl *William* to this Earl *John*.

John Earl of *Sutherland* reſigns the Earldom, in favours of *John* his Son, and his Heirs *ſimplie*, reſerving his frank Tenement, as appears by a Charter granted the 24 *February* 1455: In which the Earl *Mariſchal* his Predeceſſor is a Witneſs, and is deſigned Lord *Keith*.

To this *John* Earl of *Sutherland* ſucceeded another Earl *John* in the 1512: Whoſe Saſine proceeding upon a Retour and Precept, is produced.

From theſe two laſt Charters, it is to be obſerved, firſt, That the Dignity and Eſtate was not provided *Hæredibus maſculis*, but *Hæredibus ſimplie*. And, 2*dly*. That theſe Earls were all *Sutherlands* of That Ilk, and *John* Earl of *Sutherland*, who was infeft in 1512, is deſigned *John Sutherland* in the ſame way, as *Elizabeth* Counteſs of *Sutherland*, is deſigned in her Service, *Elizabeth Sutherland*.

The third Period of the Earl's Deſcent and Titles, is from the Service of *Elizabeth* Counteſs of *Sutherland*, in the Year 1514, to the Charter granted by King *James* in the Year 1601, both *incluſive*: And firſt, the Earl produces the ſaid Counteſs *Elizabeth* her Service upon the third day of *October* 1514: bearing that *John* Earl of *Sutherland*, Brother German to *Elizabeth* Counteſs of *Sutherland*, died infeft in the Earldom of *Sutherland*, and of all the Chaplanries.

From this Service it's evident, That *John* Earl of *Sutherland* was *Sutherland* of *That Ilk*, and is expreſly ſo deſigned in the Service; and that the ſaid Service contains the Patronage of the Chaplanries belonging to the Earl of *Sutherland*, which generality comprehends the Chaplanrie founded in the Kirk of *Dornoch*, whereof by the Contract 1275, the Earl of *Sutherland* was declared Patron.

Elizabeth Counteſs of *Sutherland*, being married to *Adam Gordon*, a Son of the Family of *Huntly*; the ſaid Counteſs *Elizabeth*, with conſent of the ſaid *Adam*, deſigned Earl of *Sutherland* her Husband, reſigned in the hands of King *James* the V. in favours of *Alexander Gordon* their Son, the Earldom

dom of *Sutherland*, and Lands thereof, which belonged Heritably to the ſaid Counteſs *Elizabeth*, to be held as freely and honourably, *in omnibus, & per omnia, ſicut dicta Elizabetha, vel prediceſſores ſuæ Comites de Sutherland, dictum Comitatum & terras &c. tenuit, ſeu poſſedit, tenuerunt, ſeu poſſiderunt, &c. Reſervato tamen libero tenemento totius dicti Comitatus, & omnium terrarum ejuſdem, cum annexis dependentiis, tenentibus tenendriis liberè tenentium, ſervitiis molendinis, piſcationibus,* Outſets, *advocatione & donatione Eccleſiarum & Capellaniarum earundem, & ſuis pertinentiis, dictæ Elizabethæ Comitiſſæ de Sutherland, & Adæ Gordon ſponſo ſuo, ratione curialitatis Scotiæ, & ipſorum, alteri diutius viventi, pro toto tempore vitæ ſuæ.* Whereupon there followed a Charter of Reſignation under the great Seal, dated the firſt day of *December* 1557.

From this Charter it is obſervable, *Firſt*, That as the Dignity and Earldom of *Sutherland* deſcended to *Elizabeth* Counteſs of *Sutherland* by her Predeceſſors, by right of Blood, ſo it was tranſmitted to her Son *Alexander* by Reſignation, *& preceptione hæreditatis*, to be held alſe honourably of the King, as the Counteſs herſelf and his Predeceſſors had held it. And 2*do*. Albeit *Ada Gordon* the Counteſs's Husband, be deſigned Earl of *Sutherland*, yet it was only *ratione Curialitatis*, which (as afterwards ſhall be made appear) was neither unſuitable to the Law nor Practice of this Nation: And it is very remarkable, that the Reſervation in this Charter, does diſtinguiſh the frank Tenement reſerved to the Counteſs, ~~what~~ was the more immediat and full Right of Fee, from the Curiality competent to her Husband. 3*tio*. from this Charter it alſo appears, that in thoſe days, it was not unuſual for Earls and Counteſſes, to be deſigned by the Name and Sirname; and therefore the ſame perſon who is deſigned in the beginning of this Charter, *Ada Comes de Sutherland*, in the Reſervation is deſigned *Adæ Gordon ſponſo ſuo*.

JOHN.

JOHN Earl of *Sutherland*, is ſerved Heir to his Grandmother the Counteſs *Eliſabeth*, upon the 23. *June* 1567.

ALEXANDER Earl of *Sutherland*, is retoured to his Father *John* Earl of *Sutherland*, 18. *July* 1573, but it appears he had aſſumed the Title before that time; for he is marked in the Sederunt of Council 1572, immediatly before *David* Earl of *Crawfurd*.

THE ſaid *Alexander* Earl of *Sutherland*, reſigns in favours of *John* Maſter of *Sutherland* his Son: and there is a Charter by King *Ja.* VI. dated 23. *March* 1580, proceeding upon that Reſignation.

THE laſt Charter in this period, is that granted by King *Ja.* 6. to *John* then Earl of *Sutherland*, the laſt day of *April* 1601, proceeding upon the Reſignation of the Earl himſelf; and alſo upon the Reſignation of ſeveral other Proprietars, and erecting the Lands then reſigned, as well as the Lands formerly belonging to the Earl, into the Earldom of *Sutherland* and Regality; in which Charter is contain'd this *obſervable* Clauſe, *Inſuper, nos perfectè intelligentes, per inſpectionem noſtrorum antiquorum Regiſtrorum, nec non per inſpectionem veterum Infeofamentorum, per noſtros nobiliſſimos progenitores conceſſorum prædeceſſoribus dicti Joannis Sutherlandiæ Comitis, & preſertim per quondam Davidem Regem Scotiæ, & alios ſuos excellentiſſimos progenitores, conceſſus ac depoſitus fuit ad predeceſſores dilecti noſtri conſanguinii dicti Joannis Sutherlandiæ Comitis, in unam liberam regalitatem, &c.* Therefore, his Majeſty by a *Novodamus*, Erects, Unites, and Incorporats the *Earldom* of *Sutherland* with the *Lands* foreſaid, in a free Regality in manner abovementioned.

FROM

From the Charter and the Writs mentioned in this period, it is manifeſt, that *Eliſabeth* Counteſs of *Sutherland*, was of the Blood, and Deſcendant of the preceeding Earls of *Sutherland*, and that the ſucceeding Earls did derive all their Rights from her. 2*do.* However the Earl of *Sutherland* and his Predeceſſors, may have ſuffered by the burning of the Caſtle of *Dunrobin*, where his Charter Chiſts were kept, ſo that the moſt part of the Writs now produced, are recovered out of the Regiſters, or Charter Chiſts of other Noblemen or Gentlemen; yet the Earl of *Sutherland*'s Deſcent in *Anno* 1601, is recognized by King *James* VI; and our Kings being the Fountain of Honour, his teſtimony *in re tam antiquâ*, muſt be of great importance; eſpecially ſeing the Charter paſſed in the ordinary Forms, thro' the Treaſury and Council, which was then in place of the Exchequer, and where the contending Earls, if they had any thing to ſay, would no doubt have Proteſted.

The fourth Period of the Earl's Title, runs from the 1601 to this day.

John Earl of *Sutherland* was ſucceeded by *John* Earl of *Sutherland* his Son, whoſe ſpecial Service and Retour at *Inverneſs*, 4 *June* 1661, is produced.

This *John* Earl of *Sutherland*, intending to declare his own Precedency, did cognoſce his Propinquity to the Earls of *Sutherland* his Predeceſſors, by three ſeveral Services and Retours at *Inverneſs*, where the Inqueſt, was of perſons of undoubted Credit, and beſt known to the Matter, *The old and remarkable Requiſite in all Members of Inqueſt*: And theſe living in the 1630, might have very good Information, from antient Men and Writs, which now the Courſe of Time and Accidents has deprived us of.

By

By theſe Services, the Deſcent of the *E*arl and his Dignity, is deduced from *William* deſigned firſt Earl of *Sutherland*, by the ſame Perſons, who have been mentioned in the ſeries above ſet down.

John Earl of *Sutherland* laſt mentioned, was ſucceeded by *George* Earl of *Sutherland* his Son, who died in the Year 1702, and he was ſucceeded by the preſent Earl the Purſuer.

These Writs are adduced by the *E*arl, for proving his own Antiquity and Deſcent by Right of Blood, from the ancient Earls of *Sutherland*: In all which there is not the leaſt Interruption, except by a Foreſaulture in the Minority of Queen *Mary*, which was in very little time after reſcinded by Queen and Parliament, *per modum juſtitiæ* by a Decreet in Proceſs; and during all that time, there is not the leaſt veſtige of interpoſing any Family, but what has deſcended lineally of the Blood of the Earls of *Sutherland*, which alone might ſuffice to ſuſtain the Concluſion of this Libel.

But the Purſuer for further evidence, has added a Concluſion, That his Predeceſſors were Earls, when the Defender's Predeceſſors are deſigned *Milites*, which the Purſuer hopes, will be ſo conſtructed by every Body, as urged for the vindication of his own Right and Privilege: But at the ſame time with the greateſt Reſpect and Honour, for the *E*arl of *Crawfurd* and his Family, who and his Predeceſſors for many Ages both before and ſince their being Nobilitate, have had very great Honour, and juſt *E*ſteem in their Country.

The Evidents uſed by the Earl of *Sutherland* Purſuer, for inſtructing that the Earl of *Crawfurd*'s Family, was much latter aſſumed into the order of Nobility, than that of the Pur-

Purſuer's, are, *Firſt*, the famous Letter to the Pope, by the Nobility and Gentry of *Scotland*, in the Year 1320, wherein the Earl of *Sutherland*'s Predeceſſor is deſigned, *Gulielmus Sutherlandiæ Comes*, and in the ſame Letter the Defender's Predeceſſor, is deſigned, *David de Lindſay*.

2*do*. By a ſeries of Charters, it appears that the Earl of *Crawfurd*'s Predeceſſors, were deſigned *de Crawfurd* and *Milites*, when the Purſuer's Predeceſſors were Earls of *Sutherland*, as in the Records of King *David* his Charters, *Anno Regni* 36, *& Domini* 1366, Charter 92. amongſt the Witneſſes is *David Lindſay de Crawfurd*.

In the Reign of *Robert* II. the 15th. Charter, *James Lindſay* is deſigned *Barron of Crawfurd*, and Nephew to the King; and by another Charter, this *James* is deſigned Son to *James*, and Grand-child to *David Lindſay* of *Crawfurd*.

Towards the end of King *Robert*, he grants a Charter to Sir *David Lindſay* (whom he calls his Son) of the Lands of *Glenask*, and which Sir *David* appears to be the Son of Sir *Alexander Lindſay* of *Glenask*, who had Married King *Robert* the II's. Daughter.

In the beginning of King *Robert* III. which was in the 1390, there is a Charter granted by that King to Sir *David Lindſay* of *Glenask*, deſigned therein his Brother.

The Connection betwixt theſe two Families, is clear by a Charter in the 14. year of King *Robert* the II. found in the Records, to Sir *James Lindſay* of the *Barony* of *Crawfurd*, containing a Tailzie (failzieing *James*) to *David Lindſay* the King's Son.

THE first mention in Record, of the Earl of *Crawfurd*'s being designed Earl, (as far as could yet be found) is in the time of *Robert* Duke of *Albany* Governour, in a Charter of Foundation of a Chaplanry of the Paroch Kirk of *Dundee*.

2*do*. *Fordon*'s History Book 15 C. 4. bears the expreſs time of the ſaid Sir *David de Lindſay*'s being created Earl of *Crawfurd*, *viz*. the 21ſt *April* 1399, which is upwards of 150 years ſhort of the Dignity of *Sutherland*; and *Buchanan*, *Leſly*, and our other Hiſtorians, concur much about the ſame time.

THIS being the Caſe of the Earl's Titles: At calling before the Lords, the Purſuer reſumed his Titles and Proceſs, and craved Decreet againſt the Earl of *Crawfurd* Defender, in the terms of his Libel.

THE Defences proponed for the Earl of *Crawfurd*, having chiefly concerned the following Points; therefore the Lords did ordain the Parties to inform as to theſe two Caſes, 1*mo*. If the Earl of *Sutherland* doth ſufficiently connect the Progreſs of his Dignity from the Charter granted by King *David* to *William* Earl of *Sutherland*; and eſpecially if *Elizabeth* Counteſs of *Sutherland*, did ſucceed to her Predeceſſors in that Dignity; or if the ſame was renewed in Favours of *Adam* Earl of *Sutherland* her Husband.

THE ſecond is, If the Earl of *Crawfurd* has preſcrived a Right of Precedency to the Earl of *Sutherland*, by 40 years uninterrupted Poſſeſſion of that Precedency; or if Preſcription can take place in Dignities.

IT was alledged for the Defender, to the firſt, That the Earl of *Sutherland* Purſuer does not ſufficiently connect the Progreſs of his Dignity, in ſo far as, 1*mo*. No Man can ſay

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but that there might be a gape in the Succeſſion of the Earls above-mentioned; neither can any Man affirm for certain, that theſe Earls did ſucceed one another by Right of Blood: For granting it were true, that there were ſtill Earls of *Sutherland*, yet it does not follow, that the Earls of *Sutherland* were of the ſame lineal Deſcent, and conſequently this Earl cannot claim the Precedency in Right of theſe Ancient Earls.

2*do*. The three Retours whereby *John* Earl of *Sutherland* was ſerved in the year 1630 to his ſeveral Predeceſſors therein mentioned, are of no force nor Authority; becauſe theſe Services being at ſo vaſt a diſtance of time, the Inqueſt behoved to proceed upon the ſame Evidence as any other Judge, and could have no other Inſtructions but theſe now produced before your Lordſhips; and conſequently can have no greater Authority than theſe Inſtructions, ſeing theſe Retours make mention of a *Nicolas* Earl of *Sutherland*, to whom *William* Earl of *Sutherland*, who lived in the days of *Alexander* II. is by one of theſe Retours ſaid to be *Atavus*, they are ſuſpect; ſeing of this *Nicolas* there is not any Veſtige in Record, or in any Charter produced; nor does the Deſignation *Atavus* agree with the number of the Perſons.

Neither is it of moment, that Retours not quarrelled within 20 Years, are by expreſs Statute declared not reducible, becauſe that only concerns ſuch Reductions as are intented by the Heirs of the Perſons, to whom the Party retoured is ſerved, but cannot concern third Parties.

To this it was anſwered for the Earl of *Sutherland* Purſuer, That whatever Succeſs the Defender may expect from any other Argument, it is impoſſible he can ever overturn the Earl of *Sutherland*'s Precedency, upon his not being con-

nected and descended of the Blood of the Ancient Earls of *Sutherland*: The Pursuer appeals to the common Fame of his Country, to the Ingenuity of every Man of common Sense, who shall without byas consider the Vouchers above narrated: Nay, unto my Lord *Crawfurd*'s best Friends, if they can with Honour or Justice refuse, that this Earl does with more Evidents demonstrate his Lineal Descent, than can be well hop'd for in any other Case. Can any Man in fair arguing deny, that *William* Earl of *Sutherland*, who had the Quarrels with the Bishops of *Caithness*, was Father to that *William*, who settled that Difference in the year 1275? Or can it be denied, that that *William*, who lived in 1275, was Father to *Kenneth*, who designs himself Son to *William*, in a Renunciation granted by him to *Murray* of *Colbinn*? Or that *William*, who married the Lady *Margaret Bruce*, was of the same Blood, being found in Possession of the same Lands, so immediatly after the death of the said *Kenneth* Earl of *Sutherland*, and that the said *William* in the Year 1364 was *Sutherland* of That-ilk, having given a Charter to his Brother, under the Name and Designation of *Nicolas Sutherland*? Or can it be disputed, that *John* who was Hostage for King *David* in the 1357, was also *Sutherland*, seing he is designed Son and Heir to *William* Earl of *Sutherland*? Or can it be doubted, that *Nicolas* of whom the Memory and Fame does yet remain, was of the same Lineage and Descent? especially seing *Robert*, who succeeds at no great distance of time, is manifestly of the Name of *Sutherland*, having given off a part of his Estate to be held of himself, to *Kenneth Sutherland* his Brother; and having received Resignation from the *very Nicolas* Brother to Earl *William*, in Favours of *Henry* Son to the said *Nicolas*, and whom he designs in that Charter his *Cousin*: Nor is it less evident, that *John* Earl of *Sutherland*, who succeeded, was of the same Blood and Name; for he resigns in Favours of

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John his Son, which *John* is ſucceeded by another *John* Earl of *Sutherland*, who in the claim of his Services is expreſly deſigned *John Sutherland*: And from theſe, *even* the Defender, cannot pretend to diſpute the Deſcent of Blood lineally.

But beſides the Deſcent of Blood, is it not alſo notour, that theſe very Lands of *Skelbo*, *Thorbolt*, *Drumuy*, &c. mentioned in the Agreement with the Biſhop of *Caithneſs* in the 1275, and in the Charters by *William* Earl of *Sutherland* to *Nicolas*, and by Earl *Robert* to *Kenneth* his Brother, belong to the Earls of *Sutherland* in Superiority to this day? And therefore to deny the Connexion of this Earl with his Ancient Predeceſſors, is but to wrangle and not to argue, and is more injurious than ſolid upon the Defender's part.

2*do*. As to the Defence, *That there is a poſſibility, that there might have been an Interruption of the Blood*; is to argue *a poſſe ad eſſe*: Neither does the Law take notice of ſuch poſſibilities, but from ſo plain concurring Evidences ſtanding ſo long together, preſumes according to what is moſt probable, eſpecially ſeing, the Defender with the outmoſt Induſtry and Invention, has never been able to offer, even the weakeſt Evidents, that ever any other Family did interupt the Series of that Succeſſion: And this Poſſibility is further redargued; becauſe if at any time the Line of *William* Earl of *Sutherland*, who married the Lady *Margaret Bruce*, had failed, then the Eſtate muſt have deſcended to *Nicolas* his brother and yet it's known, that the Lord *Duffus* was the Lineal Succeſſor of *Nicolas* and who with his Predeceſſors have alwiſe lived, and had their Eſtates in the ſame Country, never laid the leaſt Claim to it: Which is a plain Evidence, that the Eſtate is deſcended in the Line from that *William* Earl of *Sutherland*, and preſumes in Law far more ſtrongly, than the imaginary poſſibility of a Defect can be urged to the contrary.

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3*tio*. The Retours are of unqueſtionable Authority by the Law of *Scotland*, as being the moſt Ancient way known, for Cognition of Blood and Propinquity, of which our Law Books are full, and whereof an eminent Inſtance is to be found in *Seldin*'s Titles of Honour, *part* 2. *C.* 7. in the caſe of *Morgond* Earl of *Marr*, where the King appointed an Inqueſt to be made of the ſaid *Morgond*'s Title to that Earldom: And altho the Services had not then arrived to that preciſe Stile; yet at all times, it has been the only habile way for cognoſcing the Propinquity of Blood, and deſerves the greateſt Authority, as being by leil Men moſt worthy, and who are beſt known to the Matter in queſtion, and who cognoſce *Magno ſacramento interveniente*. Neither do any Retours deſerve greater Credit than theſe produced for the Purſuer, the Members of the Inqueſt being Men of Quality, or Gentlemen in the Neighbouring Country, of undoubted Fame and Reputation, both for Honeſty and Knowledge: And it's altogether groundleſs, and of dangerous Conſequence, to quarrel the Verity of the Retours, upon ſuch Pretences as are offered by the Defender, and which imports no leſs, than that the Inqueſt were *temerè jurantes ſuper aſiſam*, eſpecially in this Caſe, where the Inqueſt had not only the Lights which now we have, for diſcovering the Deſcent and Propinquity of the Earl of *Sutherland* to his Predeceſſors; But ſeveral of them having lived before both Burnings of the Earl's Caſtle of *Dunrobin*, (for twice that Caſtle was burnt) might have Knowledge of Charters and Particulars, which now are loſt, and which is the Reaſon that the moſt part of the Writs produced by the Earl of *Sutherland* are extracted from the publick Records, or recovered from amongſt the Writs belonging to other privat Hands, & in a Country where ſo many Diſaſters have happened within theſe 200 Years, it is even almoſt a Miracle, that ſo much has been preſerved.

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But further, these Noble and Honourable Persons might have proceeded upon the Documents of private Families, who had derived Rights by Charter from the *E*arls of *Sutherland*, or by Contracts: For it is well known, that beside the Estate of *Sutherland*, now in the Possession of the Family, King *David* the *Bruce* gave to *William* Earl of *Sutherland*, who married that King's Sister, many great Baronies, Thanages and Lands in *Angus*, *Aberdeen* and *Inverness* Shires, as is instructed by many Charters by King *David* to the said *E*arl, which were very shortly after alienated by his Heirs: And it's likely, that these Charter Chists of the Heritors to whom these Lands belong, could have furnished sufficient Evidents for their Verdict. And besides all these, the constant Fame of the Country, and the Genealogies of the Families in the Neighbourhood, the Acquiescence of all these who had any Title by nearness of Relation to Quarrel, and of all these of the Name, and Vassals in *Sutherland*, were good Grounds for the Inquest likewise to have proceeded in Conjunction with the Documents.

And whereas the Defender pretends to diminish the Authority of the Service, because of the great distance of time interveening betwixt *John* Earl of *Sutherland*, who was Heir served in the 1630, and his Predecessors, who deceased about the middle of the 13. Century.

It is answered, that this does not diminish the Authority of the Verdict, whether the Faith of the Verdict be examined according to the Rules of History or Law; for the Inquest proceeding in a Matter of Antiquity, did no doubt, depend upon such Evidents, as in such cases the common sense of Mankind requires; and that such Evidences may be had in this Matter, what is immediatly above said may satisfy any Man who will suffer himself to be prevailed with by plain Reason.

And as the Verdict of this Inqueſt was accountable by the Rules of Hiſtory, ſo it was no doubt valid in Law; for ſeing no courſe of time can take away the Right of Blood, it follows, that Propinquity may be cognoſced at whatever diſtance of time: And ſeing Propinquity is *habili modo* cognoſced by Services, it does alſo follow, that Services may proceed upon ſuch *Evidences* as the nature of the thing can admit, at whatever diſtance of time. And put the Caſe, that the Line of the firſt Earl of *Crawfurd* created in the 1399, had failed at this day; no doubt, the Earl of *Crawfurd* would think it but juſt, that he might be ſerved to his ancient Predeceſſors, and even perhaps upon common Fame it ſelf: And ſuppoſe any other Earl ſhould interpoſe to object againſt the Service, it would be lookt upon as *jus tertii*; and ſuch Objections not being made by one nearer in Blood, would be rejected. And put the Caſe, That the Line of the Earl of *Sutherland*, who lived in the 1364, did faill at this day, could any Man hinder the Lord *Duffus*, as deſcending of *Nicolas* that Earl's Brother, to ſucceed? certainly it would be lookt upon as ridiculous. And if an Inqueſt could cognoſce the Propinquity, and ſerve to the Eſtate even at that diſtance; no doubt, their Service muſt have effect and authority as to all other intents and purpoſes; eſpecially ſeing no Party except one, having right by nearer Propinquity of Blood, has intereſt to complain.

And whereas, the Defender pretends to diſparage the Retours for want of *Evidents* as to Earl *Nicolas*; there can be nothing more frivolous and triffling. How can the Defenders know, that the Inqueſt wanted Evidents as to *Nicolas*? To what purpoſe ſhould he have been deviſed? The period betwixt Earl *William* and *Robert*, or betwixt Earl *John* and *Robert*, was not ſo long, as to need a ſuppoſititious Earl

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to fill it up: For Earl *William* was alive in the 1364; and Earl *Robert* appears in the 1389, ancienter than any of the Earls with whom *John* Earl of *Sutherland* had any proſpect ~~in the~~ Competition in the Year 1630.

But to conclude; In the Proceſs of Reduction formerly inſiſted in at the Purſuer's inſtance, theſe Retours have been ſolemnly ſuſtained, and that upon the clear Grounds of Law above mentioned; and alſo upon the Grounds of the Act of Parl. *Ja.* IV. Parl. 5. C. 57. and *Ja.* VI. Parl. 22. C. 13. Wherein it is declared, That if Summonds of Reduction be not intented, execute and purſued before the expiring of 20 years, that the Action of Reduction of Retour and Service, ſhall preſcrive in it ſelf, and no Party to be heard thereafter to purſue the ſame Reduction. So far the Defender miſtakes in believing, or rather pretending to believe, that the Preſcription runs only againſt the neareſt of Kin: Whereas ſuch Retours are Decreets of the moſt ſolemn and unquarrelable nature, and being confirmed for the ſpace of 20 years, are irreducible at the inſtance of any Party whatſomever; ſo that th eſe Services, joined with the Writs and Circumſtances above mentioned, do not only make an undeniable *Evidence* to obtain an Hiſtorical Belief, but a full and abſolute legal Proof.

2*do.* It was excepted for the Defender, That the Earl of *Sutherland*'s ancient Titles are only proven by private Writings, wherein he is deſigned *Earl* of *Sutherland*; which does not prove him to be ſuch, ſeeing ſuch Writings are paſt even under Seals *periculo petentium.*

It was anſwered for the Purſuer, That the *End* of a Probation, is *ut fidem faciat judici*: And the Purſuer does appeal to the Lords, if the Documents produced do not make

Faith, that there was a Series of the Earl's of *Sutherland* of the ſame Blood: And if it were not ſo, then if the Line of Earl *William*, who lived in 1364, come now to fail, there would be place for an *ultimus hæres*, which were abſurd. Now if theſe Documents do make Faith for Conveyance of the Eſtate and Dignity in the Caſe of Services, why are they not probative in this Caſe? No Body will have the Confidence to ſay, that the Greatneſs of the Defender, or any other Conſideration, can change the Nature of Right or Wrong, or make that Writ improbative, which is not ſo as to the greateſt Effects of Property and Dignity. Beſides, the Diſtinction betwixt Private and Publick Rights, is nothing to this purpoſe: For all the Rights produced are *Inſtrumenta publica*, tho' they contain private Rights, and deſerve in this Caſe ſo much the greater Authority; becauſe the Characters and Hands in which they are written, anſwers to their Dates, which was long before the Purſuer's Precedency was or could be diſputed by his Competitors. And becauſe they are either under the Great Seals, Extracts out of the Chancery, ſolemn atteſts of Nottars before Witneſſes, or principal Charters or Agreements granted by, or made with the Earls of *Sutherland*, which do not only concern themſelves, but other third Parties; and wherein are inſert Witneſſes of Credit: So that to pretend, that theſe are *Inſtrumenta privata*, is againſt the common acceptation of the Civil Law, and of the Law of this and all other Nations in *Europe*. Nor is there any thing more evident, than that in Swite of original Charters, Charter of Reſignation, and Charter of Confirmation, the Earl of *Sutherland* is own'd by our Kings under that Dignity and Deſignation.

3*tio*. The main Thing excepted upon the part of the Defender, is, That the Courſe of Succeſſion was interrupted in the Perſon of *Elizabeth* Counteſs of *Sutherland*, who ſucceeded in *Anno*. 1514.

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As to which, it was proponed by the Defender, *1mo*, That the Dignity of Earl amongſt us, has an ancient original: For the *Counts* were known under the *Roman* Emperors of different kinds, according to their different Imployments about the Prince: And when that Empire fell under the Invaſion of Barbarous Nations, theſe *Barbarians*, pleas'd with the Policy and Greatneſs of the Empire, retained the Names of theſe Dignities, but chang'd the Nature of them, according to the Inſtitution of theſe People: So that whereas formerly the Title of *Comes* did ſignify ſome Dignity or Office, afterwards theſe Dignities and Offices were divided amongſt the principal Leaders of theſe Nations, with certain Benefices or Fees annexed to them, which were given on condition of Fidelity and Military Services: And forasmuch as Women were not fit for Military Service; therefore Feus regularly deſcended only to Males. And this is ſo clear from the Books of Feus (which we have joined in with the *Corpus juris civilis*) that it were in vain to confirm it by any Argument.

These Feudal Cuſtoms were ſoon propagated to the reſt of the Countries in *Europe*, and from them alſo we have the original of *our* Feus, which are no older, than the time of King *Malcolm*, who lived in the 1004 Year of God: And it is preſumable, that tho ſucceeding Cuſtom has brought in Heirs of Line, or Heirs whatſomever, to ſucceed in Fees and Heritage, yet the ancienteſt of our Dignities, eſpecially ſuch as were given within 100 or 200 Years, or thereabouts, were given in the Terms of the common Feudal Law; and conſequently did not deſcend to Females. And in this Caſe it's remark'd, that King *David* the II's Charter is only *haredibus inter ipſos*, which cannot import Heirs of Line, or Heirs whatſomever: And therefore, the Male Line of *Wil-*

liam Earl of *Sutherland* having fail'd in *John* Earl of *Sutherland*, immediat Predeceſſor to the ſaid Counteſs *Eliſabeth*, the Earl can date the Antiquity of his Dignity no higher than from *Adam Gordon* Husband to the ſaid Counteſs *Eliſabeth*, Deſigned Earl of *Sutherland*.

SECUNDO. To confirm this the more, the Defender obſerved, That tho the Counteſs *Eliſabeth* be ſerved to the Earldom of *Sutherland*, yet ſhe is only deſigned *Eliſabeth Sutherland* in her Service.

TERTIO. *Eſto*, that Counteſs *Eliſabeth* could have ſucceeded as Heir of Line to the Dignity as well as to the Eſtate, yet the Earl muſt date his Antiquity from *Adam Gordon* her Husband. Seing it appears, *Firſt*, That the ſaid *Adam Gordon* was Earl, which could not be but by a new Creation; and albeit that Creation be not extant, yet it's preſumed. *2do.* That after the ſaid *Adam Gordon*, the Family of *Sutherland* did, till of late, carry the Name and Arms of *Gordon*, at leaſt quartered in Chief. *3tio.* Ever ſince that Succeſſion, the Family of *Sutherland* have not pretended to the Rank of the Earl of *Huntley*, altho he was younger than the Earl of *Sutherland*, compting from the date of his firſt Original, and compting from *Crawfurd*'s firſt Creation, he is older than was the Earl of *Huntley*.

IT was anſwered for the Purſuer, to the *Firſt*, That it were in vain to recur to the original of Titles of Honour in this Caſe, or to examine when they came to be join'd with Benefices. Nor is it very certain, that our Feudal Rights had their ariſe from King *Malcolm*. And it is yet leſs to the purpoſe, what was urged from Archbiſhop *Kennedy*'s Speech, ſaid, by *Buchanan*, to have been pronounced in the Minority of King *James* II. againſt the Government of Women.

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in general: Theſe, as being only brought in to render the Debate more pompous; otherwiſe little to the Matter, and even at this day unſeaſonable; the Purſuer paſſes over.

But whereas the Defender alledges, That the ancienteſt Dignities in this Kingdom, are preſumed to have been granted only to Heirs Male, becauſe of the Authority *Lib. Feudorum*; and that King *David*'s Charter is *hæredibus Matrimonii*, and does not expreſs Heirs of the Marriage whatſomever.

It was anſwered, 1*mo*. That there is nothing more certain, than that the Books of Feus never was ſo generally received as ſometime the *Roman* Law was, becauſe of the large extent of the Empire, and afterwards the *Canon* Law, becauſe of the overgrown Authority of the Biſhop of *Rome*: But the Books of Feus were private Collections concerning the Cuſtoms, chiefly in ſome places of *Italy*. And therefore it is, that *jura Feudalia* are ſaid to be *jura localia*; and tho the manner of holding Lands as *bæneficia* has prevailed in moſt places in *Europe*, yet there is no common Rule concerning the eſſentials in Feudal Holdings, or Succeſſions in Fies and Dignities, but every Country has its own: And conſequently the Authority of theſe Books cannot ſo much as afford an Argument for the Defender.

This is indeed certain and acknowledged, That Dignities anciently were given either with Fees, or ſuch who had great Land Eſtates were Enobled, and their Fees were erected with certain Juriſdictions and Privileges, and with the Title of *Comes* or *Miles*: The Fees belonging to ſuch as were Nobilitat, were alſo diſtinguiſhed and erected into *Comitatus* or *Feudum militare*, which ſeem to be our moſt ancient.

ancient Diſtinctions of Honour. Neither is it to be doubted, but the *Earls of Sutherland* were ſo dignified, and the Earldom ſo erected: But ſtill as other *Feoda militaria*, the ſaid Earldom and others of the like kind, did deſcend to Heirs Female.

The Books of Majeſty are full of Authorities to this purpoſe; nor can the Authority of theſe Books be diſputed: For tho *Craig*, and ſome of our Lawyers who have followed him, have of late queſtioned them, yet they are expreſly called the *Ancient Books of our Law* in our Acts of Parliament; which is of much more Authority, than the opinion even of the greateſt Lawyers. *Vide Ja. I. Parl. 3d, cap.* 54. *Ja. 3d Parl.* 14. *Cap.* 115. And the Authority of theſe Books is further confirmed by a Manuſcript, which appears to have been written in the days of King *David* the *Bruce*, and is ſufficiently demonſtrated by what Sir *James Dalrymple* and Mr. *Anderſon* have lately written upon this Subject. But granting that theſe Books had been written by *Ranulphulus Deglandvilâ Ceſtriæ Comes*; yet their Authority cannot be declin'd in this Matter: For however different our Cuſtoms may appear now, yet the Original and Condition of the Feus both in *England* and *Scotland* are much about the ſame, and appears from what *Skeen* has obſerved upon the Preface to the Books of *Regiam Majeſtatem*, that *Glandvilla* was cotemporary with our King *David* the *Bruce*: Beſides ſuppoſing theſe Books not to be Books of our Law, as there is no reaſon; yet certainly there had never been any occaſion for the Diſpute, unleſs what is contained in them had a great Affinity with our Law.

But of the Authority of theſe Books, perhaps more than is neceſſary has been ſaid, being enough for the preſent purpoſe; and therefore the Purſuer, out of many, ſhall only ad-

adduce the following Citations *Lib.* 2*d. Cap.* 25. *Hæredum alii proximi alii remotiores ſunt proximi hæredes alicujus ſunt quos ex ſuo corpore aliquis procreavit ut Filius & Filia.* And Cap. 27. having treated *de Succeſſione* Filiorum *ad Patrem*; in the next Chapter treats *de Succeſſione* Filiarum *ad Patrem*; and ſays, *Idem dicendum de Filia una relicta ut de uno Filio, ſi autem quis plures habuerit Filias inter eas dividetur hæreditas, ſive fuit Miles ſive Soccomannus Burgenſis, ſive alius liber homo pater earum.* And then in the next Chapter follows, *Qualiter maritus primogenitæ Filiæ faciet Homagium pro ſe & ſororibus Uxoris ſuæ.* In *cap.* 41 & 42 is treated *de Ætate legitima hæredis Militum, &c. & de poteſtate Dominorum in hæredes ſuorum hominum.* In both Chapters the Succeſſion of Female Heirs is implied, and how the Fie returns to the Superior during their Ward, till their lawful Age, and what power the Superior has over the Perſons and Eſtates of the Vaſſal during that time, are defined, of which more in *Cap.* 48, & in *Cap.* 57. *in fine*, *Cap.* 58 & 59. is treated how Homage is done to the Superior by the Husband of Female Heirs: And from theſe Chapters, with *Skeen*'s Obſervations upon them, it is evident, not only that Women did ſucceed even in Military Fees, which were Fees with Juriſdiction and Dignity, but alſo that Heireſſes *præſtabant fidelitatem*, and their Huſbands did Homage *ratione Curialitatis.*

But theſe things are of themſelves undeniable; and therefore the Defender was forc'd to recur to another ſhift, alledging, That albeit Succeſſion as to Lands and Heritage did deſcend to Heirs Female; yet in Dignities it was otherwiſe, theſe deſcended only to the Heirs Male: Of which Aſſertion the Defender was able to adduce no other Authority than the Caſe of *Stuart* Earl of *Bothwell*, who having married the Daughter of *Hepburn* Earl of *Bothwell*, took a new Charter and his Precedency, according to the date of his new Charter.

It was anſwered for the Purſuer, That this Diſtinction is without Ground or Authority in Law; and it is certain, that the common Rule in Law muſt take place, which with us, where Heirs are expreſt in general, extends to Heirs whatſomever; and whoever alledges a Diſtinction of that kind, againſt the common Rule, ought to prove it: But in this Caſe the Defender does not argue conſiſtently with himſelf: For if Dignities were anciently given not only to the Perſon, but alſo by erecting of his Lands with Titles of Dignity, then it follows, that the Heirs of the Fie ſhould be alſo Heirs in the Dignity. Now it is inconteſtible, that Women were called in the Succeſſion of Fie, as under the Deſignation of Heirs.

But it were in vain in this place to add further Authorities, ſeing the Queſtion is overruled by the famons Deciſion 11 *July*, 1633, *Oliphant* contra *Oliphant*, where the Lords "found, at the Inſtance of the Daughter of the Lord *Oliphant*, "againſt his Heir Male; that the Lord *Oliphant* having ap- "peared in Parliament, and being acknowledged by his Ma- "jeſty in Charters and Letters granted by the King, his *Cou- "ſin*, with the Title of Lord *Oliphant*, altho he could ſhew "no Charter of Erection, whereby his Predeceſſors were cre- "ated Lords, that this was enough, conform to the Laws of "this Realm, to tranſmit ſuch Titles in the Heirs Female, "where the Defunct had no Male Children, and where there "were no Writs extant to exclude the Female: And this De- ciſion is the more remarkable; becauſe it was pronounced, King *Charles* the firſt ſitting in Judgement with the Lords. And the Caſe ſhall be yet further illuſtrated, when the Purſuer anſwers the Objections of *Adam Gordon*'s aſſuming the Title of Earl of *Sutherland*.

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As to what the Defender obſerves, That King *David*'s Charter was *Hæredibus inter ipſos*; it's nothing to the purpoſe: For the Dignity and Title of Earl did pre-exiſt in the Family of *Sutherland*, as has been already ſhown, and the King's Charter did erect the Earldom, in favours of *William* deſign'd Earl by the Charter, into a Regality: So that that Argument at moſt can only regulat the Succeſſion, in ſo far as it concerns the ſuperadded Priviledge of Regality, but not as to the Earldom, whereof the Right was not innovat. But in the next place, it is certain and undeniable, that the Earl of *Sutherland* is deſcended of that Marriage: For altho there be a poſſibility, that *William* Earl of *Sutherland* might have been married a ſecond time; yet that being *Facti*, and not preſumed in Law, muſt be proven, if the Defender thinks fit to alledge it, which is impoſſible; ſeing the Truth and conſtant Fame is in the contrary: And therefore, albeit the Earl of *Sutherland* had no more Ancient Documents to plead than the foreſaid Charter from King *David*, yet it were ſufficient to eſtabliſh his Antiquity and Precedency, eſpecially ſeing he has deſcended off the ſaid Marriage, and does enjoy to this day, the Regality provided to the Heirs of the Marriage.

To the ſecond Exception made againſt Counteſs *Elizabeth*'s Succeſſion, *viz.* That in her Service ſhe is only deſigned *Elizabeth Sutherland*, without being called *Comitiſſa*.

It is anſwered, That this Obſervation is of no weight; becauſe there is no Law requiring that the Counteſs ſucceeding to the Eſtate of her Predeceſſors ſhould in her Service take the Title of Counteſs: She might have foreborn the Title for ſeveral Years, yet re-aſſumed it when ſhe pleaſed: But it is plain from the Writs produced in the Proceſs, that there was no ſuch thing neceſſary in Services: For *John*

Earl of *Sutherland*, the Counteſs's immediat Predeceſſor, is deſigned in his Service, engroſſed in the Saſine *ſimply John Sutherland*, Heir to *John* Earl of *Sutherland* his Father; and juſt ſo the Counteſs *Elizabeth* is deſigned *Elizabeth Sutherland*, Heir to *John* Earl of *Sutherland* her Brother; nor was the Stile fixed in theſe Matters, for the Counteſs aſſumes her Title, as will appear by the following Charter. And *Adam Gordon* her Husband is in one part of the Charter deſigned *Comes Sutherlandiæ*, and in another part, *Ada Gordoun ſponſo dictæ Elizabethæ Comitiſſæ*.

3*tio*. Whereas the Defender did very anxiouſly contend, that the Dignity of the Family of *Sutherland* was interrupted by *Adam Gordon*'s taking the Title of Earl of *Sutherland*, and his Succeſſors carrying the Name and Arms of *Gordon*.

In anſwer to this mighty Objection, the Lords will be pleaſed to notice, That this Objection is of that kind, that by proving too much, proves nothing: For if the Earl of *Sutherland*'s Antiquity were to be computed from Counteſs *Elizabeth* and her Husband, then his Precedency behoved to be regulat conform to that date, *viz*. 1514: And yet it is inconteſtible, that the Earl of *Sutherland* enjoys without Diſpute the Precedency to about ten Earls created before that Date.

But, 2*do*. The Caſe in fact is, That the Counteſs of *Sutherland* being married to a Son of the Family of *Huntley*, he was allowed to aſſume the Title by no new Patent, but only as a Husband to the Counteſs; and therefore when the Eſtate and Honours are reſigned in favours of *Alexander* their Son; the Counteſs reſigns with conſent of her Husband *Comitatum & terras de Sutherland*, to be held as freely and honourably by her Son *in omnibus & per omnia ſicut dicta Elizabe-*

zabe-

zabetha vel predeceſſores ſui Comites de Sutherland dictum Commitatum, &c. tenuit ſeu poſſedit tenuerunt ſeu poſſiderunt. And in the ſame Charter, it is to Counteſs *Elizabeth*, that the frank Tenement is reſerved off the Earldom, *Et Adæ Gordon ſponſo ſuo ratione curialitatis Scotiæ*; and therefore alſo it is, that *John* Earl of *Sutherland* ſerves to the Counteſs of *Sutherland* his Grand-mother, and all theſe do demonſtrat that *Adam Gordon*'s Title was only *ratione curalitatis*: nor is it leſs evident, that this was conform to the ancient Law and Cuſtom of *Scotland*.

For clearing whereof, it is to be remembred, what has been already obſerved from the Books of the *Majeſty*, that an Heireſs owed Fidelity to the Superior; but the Husband did the Homage, which implies that the Husband did fully participat of the Fee, with all its Qualities.

And this is alſo confirmed by a Series of Inſtances, both Ancient and Modern.

And firſt, *Ranalph* Earl of *Murray* being killed in the Battle of *Durham*, *Anno* 1346, *Agnes* his Siſter ſucceeded to the Earldom, and being married to the Earl of *March*, he aſſumes the Titles *Martii & Moraviæ*, *vide Collections concerning the* Scots *Hiſtory* by Sir *James Dalrymple*, *pag.* 345, *in fine*, and 346, which certainly was not by a new Creation: For why ſhould the Earl of *March* take a new Patent of a later date, being already an Earl? And therefore it is preſumed to have been *ratione curialitatis*. The ſame Author alſo obſerves, that *Thomas Dunbar* ſucceeded to the Earldom of *Murray*, which in the Reign of King *James* the ſecond, went by an Heireſs to *Archbald* Brother to *James* Earl of *Douglaſs*, who was forefaulted in the 1455.

In like manner, the Dignity of *Conſtable* being in the Family of the *Morvails*, the ſaid Dignity was by Marriage transferred to *Allan* the Son of *Rolland* Lord of *Galloway*, with whoſe deſcendants it continued till the Forfaulture of *John Baliol*, and then was ~~reſtored~~ by King *Robert* the *Bruce* upon the Family of *Errol*. *Ibidem*, *page* 348.

It is alſo notour, that the Earldom of *Carrick* was acquired to the Royal Family by the Marriage of *Robert Bruce* Father to King *Robert* the *Bruce*, with *Martha* Counteſs of *Carrick*. *Ibidem*, *page* 360.

The Family of *Marr* has often been conveyed to Daughters, and afford ſeveral Inſtances to the preſent purpoſe, as particularly, *ibidem* 380, *Agnes Comitiſſa de Marr*, is mentioned in a Charter in the Lawiers Library, and Earl *Morgan* her Husband, which is certainly *ratione Curialitiæ*. But the *Cumings* Earls of *Marr*, being Forfaulted by King *Robert* the *Bruce*, it is no leſs certain, that a new Line begun from *Graitney* Earl of *Marr*, to whom King *Robert* gave the Title and Dignity, and whoſe Male Line faillieing in *Thomas* his Grand-child, he was ſucceeded in his Honours and Eſtate by *Margaret* Counteſs of *Marr*, who was Married to the Earl of *Douglaſs*, and *James* Earl of *Douglaſs* their Son, carried the Title of both Earldoms: But being killed at *Otterburn*, and dying without Children, that Race faillied, and the Dignity deſcended to another Daughter of *Thomas* Earl of *Marr*'s, who was Married to *Stuart* Earl of *Buchan*; and that Line again faillieing, there aroſe a Queſtion concerning the near ſucceſſion to the Dignity of *Marr*, both Parties founding upon their Titles as deſcended of Heirs Female: King *James* I. claimed it as the deſcendent of K. *Robert* the *Bruce* his Queen; and the Earl of *Marr*'s Predeceſſor

ceſſor claimed it as deſcending of *Helen* another Daughter o *Graitney* Earl of *Marr*'s; and at laſt after long interruption the Earl of *Marr*'s Title was acknowledged in the Parliament 1567. And in the ſhort Account of this Family, it is ſpecially to be obſerved, not only that the Daughters did ſucceed in *D*ignities, and that the Husbands did ſhare of theſe Dignities *ratione curialitatis*; but further, both the *Douglaſs* Earl of *Marr*, and the *Erskine* Earl of *Marr*, did retain their own Names, and yet enjoy the *D*ignities and Precedencies, as deſcending to their Heirs from the foreſaid Heireſſes.

THE *E*arldom of *Fyfe* did alſo deſcend to an Heireſs *Iſobel* Counteſs of *Fife*, and her *H*usband *William Ramſay* is deſigned *E*arl of *Fyfe*, which muſt have been *ratione curialitatis*: For the ſame Counteſs by an Indenture 1371, gives the Earldom to *Walter Stuart*, to whom ſucceeded *Robert* his Brother, who is deſigned *Comes de Fyfe* and *Monteith*, untill he was created Duke of *Albany*.

THE Family of *Angus* affords another great Example in this Caſe: For the Earl of *Douglaſs* being Married to *Margaret Stuart* Counteſs of *Angus*, his deſcendants keeping the Name of *Douglaſs*, enjoy the Title and *D*ignity of *Angus*, which is now incorporat in the Dukedom of *Douglaſs*.

LIKEAS, the ſaid Earldom of *Angus* was conveyed by the Heireſs of *Cuming* Earl of *Angus*, *Ibidem*, *page* 367, who was Married to *Gilbert de Umphravil*, from whom the Earldom with the Name of *Umphravil* was conveyed downward, untill *Robert Umphravil* was Forfaulted by King *Robert* the *Bruce*. After which the Earldom came to the *Stuarts*, by a Gift from them to the Daughters by a Marriage.

THE

The Earldom of *Strathern* was beſtowed upon *Robert* Great Stewart of *Scotland*, and by him was given to *David* his eldeſt Son by a ſecond Wife, who was ſucceeded by *Eupham* his Daughter, who was deſigned *Comitiſſa palatina de Strathern*; and her *Husband Patrick Graham* is alſo deſigned Earl *Palatine* of *Strathern*; and her Son in a Charter 1422, *Maliſious Graham*, is deſigned *Potens & magnificus Comes de Strathern*: So that here was the Dignity conveyed by an *Heireſs*, firſt, to *Patrick Graham* the *Husband*, who aſſumed the Title, and then to *Maliſious Graham* the Son. And all this, notwithſtanding that the *Heireſs* was of the Blood-Royal, and of the Name of *Stuart*.

And the ſame Family of *Strathern* affords another Inſtance of a Female Succeſſion; for the *Eſtate* and Dignity was forefaulted through *Joanna* Counteſs of *Strathern* her marrying the Earl of *Warren* an Enemy to the King and Kingdom; and the Eſtate coming ſo by Forefaulture to the Crown, King *David* the II. gifted it to *Robert* Stewart of *Scotland*.

Stuart Earl of *Buchan* married the Counteſs of *Roſs*, and in the Chartulary of *Murray* he is deſigned *Earl* of *Buchan* and *Roſs*: This is to be found in the foreſaid Decreet and Agreement betwixt the *Earl* of *Buchan* and Counteſs of *Roſs* his Lady in *Anno* 1389. wherein the *Earl* of *Sutherland* becomes Cautioner for *Alexander Stuart* Earl of *Buchan*.

But the Family of *Buchan* affords one more Inſtance: For *Douglaſs* Son to the Laird of *Lochleven* having married *Stuart* Heireſs of *Buchan*, was ſucceeded by *Mary Douglaſs* their Daughter, Heireſs of *Buchan*.

And a ſecond Son of the Family of *Marr* having married to *Douglaſs* Counteſs of *Buchan* in *Anno* 1617, the Family of *Buchan* then changed Name to that of *Erskine*, and ſtill continues the Dignity and Precedency of Earl of *Buchan*, and without being put to aſſume the Name of *Stuart*; *James* Earl of *Buchan* did in the Year 1628 reduce the Decreet of Ranking, and obtained his Precedency declared againſt the Earl of *Glencairn*, who was immediatly ranked before him in that Decreet.

The Family of *Athol* enjoys the Title, Dignity and Precedency of *Athol*, by Marriage, altho the Sirname be changed: The Title of *Athol* is very ancient, and came from a former Race by Marriage to *Thomas de Galovidia* Brother to *Allan* Lord of *Galloway*, from whom it came alſo by Marriage to the *Cumings*; and having at diverſe times for different Cauſes fallen in the King's hands by Forefaulture, at laſt the Earldom and Dignity was beſtowed upon *John Stuart* Brother *uterin* to King *James* the II. in whoſe Line it has yet continued; but *Murray* of *Tullibarden* having married the Heireſs of *Stuart* Earl of *Athol*, his Succeſſors do now enjoy the Honour and Dignity of the Eſtate, albeit ever ſince the Family has born the Name of *Murray*.

In like manner the Lord *Maxwel* having married the Daughter and Heireſs of the Lord *Herries*, the Family of *Maxwel* enjoyed the Title of Lord *Herries*, without changing their Name.

And of late years, the Dignity and Precedency of *Abernethy* Lord *Salton*, has deſcended to *Frazer* of *Filorth*, and the preſent Lord *Salton* enjoys that Honour without changing the Sirname of *Frazer*.

And becauſe the Family of *Huntley* has been mentioned in this Caſe, it is well known, that a ſecond Son of the Houſe of *Winton* having married the Heireſs of *Huntley*, the Family of *Huntley* did for ſome time thereafter bear the Sirname of *Seaton*, and that ſeveral Families deſcended of *Huntley*; ſuch as *Touch* and *Meldrum* did, and do retain the Name of *Seaton* to this day.

But what need further Inſtances in a Caſe, *Firſt*, ſo clearly eſtabliſhed in the Books of *Regiam Majeſtatem*. *2do.* In the common Courſe of Succeſſion. *3tio.* In the ſolemn Deciſion 11 *July* 1633, between the contending Heirs of the Lord *Oliphant*, the King himſelf preſent and ſitting in Judgment. *4to.* From a Series of Inſtances both before and ſince the 1514, which is the date of the Counteſs *Elizabeth*'s Service.

But that which ſhould ſilence the Defender in this Matter, is, That even the Royal Dignity deſcends to Daughters, and that the Royal Family of the *Bruce* brought in their own Sirnames, and that Sirname again was changed for the Royal Name of *Stuart*, the Illuſtrious Family of the *Stuarts* having ſucceeded by Marriage with the Heireſs of the Crown.

From what has been above ſaid, the Purſuer is perſwaded, that there cannot remain the leaſt ground of Scruple with any Perſon judging impartially, and much leſs with Perſons of ſo great Penetration and Juſtice as the Lords of Seſſion: For indeed, all that has been brought againſt the Connexion of the Purſuer's Titles, is conſtrained and unnatural; for who can believe, that *Adam Gordon* got a new Patent, whereof there is no manner of Evidence, nor any Neceſſity, as the forgoing Inſtances ſhow? Patents at that time

time were given by Grants under the Great Seal, and the Records at that time are extant; but as to this Matter, are deeply ſilent: But ſuppoſe that *Adam Gordon* had taken a new Charter to himſelf, can any Man imagine, That the Earls of *Caſſills*, and theſe before him, would have ſuffered a new created Earl after the 1514, to have taken the Precedency of them? Or any Man imagine, that *Adam Gordon* would have taken a Patent to prejudge his Heir of his Precedency, for the very Vanity of being called an *Earl*? Or, that his Heirs would have acquieſced in any Innovation of the ancient Titles? Certainly there is no place for any ſuch Conceit; eſpecially ſince the Eſtate and Honours deſcends by Services to Counteſs *Elizabeth*, in the ſame manner as moſt of the Great Families of the Kingdom of *Scotland* have deſcended, and with more Evidents to ſhow, than perhaps any other of that Antiquity, in a Country ſo miſerably torn with Contention and Civil Wars, could produce.

And if ſtill the Defender will urge the aſſuming of the Name of *Gordon*; The Purſuer muſt alſo intreat your Lordſhips to obſerve, how often the Great Families above mentioned have had Alterations in their Sirnames, retaining ſtill the ſame Dignity. Likeas, the Family of *Sutherland* has, for many years, returned to bear the Name and Arms of *Sutherland*, which they might have omitted, without any prejudice to their Titles or Precedencies, as appears by the fore-cited Inſtances. Neither can the Defender, or any elſe complain of Injury; ſeing the Earl of *Sutherland*, in aſſuming the Sirname of *Sutherland*, takes nothing that ever did belong to the Defender or his Predeceſſors; or that did not belong to the Purſuer or his Anceſtors.

And it may be applied to this purpoſe, that the *Civil* Law in a paralel Caſe, *viz.* That one of a *Senatorian* Or-

der, being adopted by a *Plebeian*, acquires the Name and Right of a Son in the Family in which he is adopted ; and yet he does not loſe any Honour or Dignity that belonged to him by his own Blood. *L.* 35. *De adoptionibus. Per adoptionem Dignitas non minuitur ſed augetur, unde Senator etſi a Plebeio adoptatus eſt manet Senator, ſimiliter manet & Senatoris filius* ; Which Laws are Cited by *Cujacius Conſul* : 56. *De adoptionibus & nobilitate.* And from the parity of Reaſon it may be argued, That ſince the Deſcendants of the Counteſs *Eliſabeth* were already Noble by the Dignity deſcending from her, they could have enjoyed any acceſſion of Honour from their Father, whoſe Name they carried ; but could ſuffer no diminution of the native Dignity deſcending with the Title of *Sutherland*.

It was alſo touched in the Debate for the Defender, That the Earl of *Sutherland*'s Poſſeſſion was interrupted, by a Doom of Forfaulture, pronounced againſt them in the Parliament 1564.

To which ſeveral Anſwers may be made from good Authority, clearing, That where a Party forfaulted is reſtored *ſive per modum gratiæ, ſive per modum juſtitiæ*, He returns to his former Rank, as well as to the Dignity to which he is reſtored : But ſeeing the Purſuer produces Decreet in *April* 1567, reſcinding the ſaid Doom of Forfaulture *per modum juſtitiæ*, he ſhall not trouble your Lordſhips with any further Argument upon theſe Queſtions.

To conclude what concerns the Connexion of the Earl of *Sutherland*'s Titles, the Purſuer cannot but obſerve, That in this Caſe the Earl of *Crawfurd* produces nothing, except the the Decreet of Ranking, to which he can have no pretence of Title or Right, unleſs he did inſtruct his Connexion with

with the ancient Earls of *Crawfurd*, at leaſt with the Earl of *Crawfurd*, ranked in that Decreet, which might give opportunity to the Purſuer in his Turn, to diſpute the Defender's Connexion with his Predeceſſors,and his Antiquity: For the Purſuer is not ignorant, that theſe have been quarrelled upon Grounds which give the Purſuer ſeveral Advantages: But ſeing the Purſuer has a very tender Regard to the Defender and his Family,he contents himſelf to ſay theſe things which are neceſſary for the Vindication of his Dignity and Honour, ſuppoſing that nothing were diſputable upon the other part: But at the ſame time, the Purſuer begs leave to reſerve the Liberty to himſelf, to make uſe of theſe Exceptions againſt the Defenders Title upon occaſion.

THE ſecond Point to be cleared is, If the Earl of *Crawfurd* has preſcribed a Right of Precedency to the Earl of *Sutherland*, by 40 years uninterrupted poſſeſſion of that Precedency: Or, If Preſcription can take place in Dignities.

BEFORE the Purſuer enter into that Queſtion, he muſt earneſtly deſire, that the Lords will be pleaſed to conſider, That ſince the Antiquity of his Title is connected beyond diſpute, it neceſſarly follows, that he ought to have the Precedency declared conform; the Rule of Law in that Matter being expreſſed *L.* 1. *Cod. de conſulibus quis enim in uno eodemque genere dignitatis prior eſſe debuerat niſi qui prior meruit dignitatem*: And by that Rule the Defender has no ſhadow of Competition. And whatever elſe is offered as a Rule in Matters of Precedency, is againſt the very Foundation. It's true indeed, that in Competitions amongſt Princes, other Rules have been offered; but theſe have been lookt upon ather as Pretext, than Reaſons, whilſt the Rule for deciding r recedency by the Antiquities of the Titles and Documents

amongſt theſe of the ſame Degree, has its foundation in Nature it ſelf, and has never been conteſted.

But the Defender alledges, 1*mo*. That the Foundation of our Titles of Honour in *Scotland*, eſpecially theſe which are more Ancient, have no other Authority but Cuſtom; and that before King *James* III. few Patents of Honour can be produced: And ſeeing Titles of Honour were eſtabliſhed by Cuſtom, no doubt Precedency might be acquired by Preſcription. And for confirming this Poſition, the Defender alledges the Authority of *Craig*, *lib.* 1. *Feudorum Diegeſi duodecima*, where he ſays, *Non negarem tamen nobilitatem, aliquando concedi ex uſu & poſſeſſione tanti temporis, cujus memoria non extat, & ſufficere ſcientiam magiſtratuum Regis contra quos hæc nobilitas preſcribi poteſt*; and for this he cites *Tiraquellus Cap.* 14. *de nobilitate*.

This Poſition once eſtabliſhed, the Defender, 2*do*. alledges and ſubſumes, That he has been in poſſeſſion time paſt memory, of the Dignity of the Earl of *Crawfurd* in Precedency to the Earl of *Sutherland*, and that both before the Decreet of Ranking, and ſince, which the Defender pretends to prove by the Rolls of Parliament, Council and Exchequer, wherein his Predeceſſors have been conſtantly called before the Predeceſſors of the Earls of *Sutherland*, as have been alſo the Earls of *Errol* and *Mariſchal*, of whom the Defender has the Precedency.

3*tio*. The Earl of *Sutherland* Purſuer cannot ſhow that ever ſince the time of Counteſs *Elizabeth* in the year 1514, the Earls of *Sutherland* have claimed the Rank of the Earls of *Huntley*, which was a tacit Confeſſion, that there muſt be ſome defect in the Purſuer's Antiquities.

But, 4*to*. The Defender founds upon the Decreet of Ranking, in different ways: And, 1*mo*. It is alledged, That the De-

Decreet of Ranking is a demonſtration, that at the time of that Ranking, the Commiſſioners had the *Defects* of the Earl of *Sutherland*'s Titles before their eyes. 2*do*. This *D*ecreet of Ranking being pronounced by Comiſſioners, ſpecially authorized under the Great Seal from the then King, it's urged, that the Decreet has the Authority of *res judicata*; nor can it now be quarrelled at the inſtance of the Purſuer, unleſs it were upon production of more ancient *D*ocuments than were then produced. 3*tio*. *Et ſeparatim*, it is contended, that albeit the Decreet of Ranking contains a Reſervation to quarrel; yet it was a Title of Preſcription; and that the *E*arl of *Sutherland* not having purſued his Reduction within 13 Years of the Act of Parliament 1617 concerning Preſcriptions, nor indeed 40 years after the Decreet, the *E*arl of *Crawfurd* has good Right to the Preceedency.

It was anſwered for the Purſuer, firſt in general, That the Defender's Lawiers do not well agree in what manner to propone this Defence of Preſcription; ſometimes they talk of immemorial Poſſeſſion, which certainly in Law is different from Preſcription of 40 Years; and at other times the Defender's Lawiers talk of the Decreet of Ranking as *res judicata*; others of them abandon that Conceit, and only plead, that it may be ſuſtained as a Title of Preſcription: This uncertainty where to lay the weight of the Defence, is no ſmall Argument of the difficulty which the Defender has, to make the appearance and ſhew of a Defence.

But more particularly, it's anſwered, That the Defender errs in the very *E*ntry: For it is a Miſtake, that the Titles of Honour in this Kingdom have no other Authority but Cuſtom & Uſe: It's certain, that Nobility was conferred by ſome particular Inveſtiture, which is eaſily demonſtrat by a few Inſtances, which belong to this Caſe. The *E*arl of *Crawfurd*'s Predeceſſors are deſigned *milites*, till about the year 1397,

1398

1398, or 1399, and very quickly thereafter they are designed in Charters, *Earls*, a Dignity which they could not have acquired *usu*, in so short a time And in like manner the Predecessor of the Earl of *Errol*, is designed about the 1450 *Miles*; but in the 1455, he is designed in Charters, *Earl*, and at the same time, the Earl *Marischal*'s Predecessor was designed Lord *Keith*, who had been but shortly before designed in Charters *Miles*, and sometime thereafter designed *Earl*; and our Histories acquaint us, that upon the Coronations of our Kings, new Dignities were conferred: So *Alexander Stuart* of *Buncle* was created Earl of *Angus*, at the Coronation of *David* II.

From these Instances its plain, That our Titles of *Ho*nour do not derive their Authority meerly from Custom or Use. And this could yet be further illustrated from the first *P*atents now extant, which are presumed to come neareſt to the Ancient Custom, where the Ceremony of Investiture in *P*arliaments, is distinctly expreſt, as particularly in the Charter creating the *E*arl of *Bothwel* in *P*arliament, and erecting the Lordship of *Bothwel* into an *E*arldom.

It is true indeed, That where Families have been long in *P*ossession of Titles of *H*onour, our Customs do not require that they should be obliged to produce the *P*atents of their Creation, nor the Minuts of these *P*arliaments where they were received and invested; because that were impossible after such Disorders, and loss of Records: But still our Custum requires Instruction in Writing, for clearing that such Families were dignified with Titles of Earls, *L*ords, or the like; and that being once proven, according to the Antiquity of these Evidences in writing, the Precedency is determined. As for instance, the Earl of *Sutherland* shewing, that for a course of near 500 Years he and his *P*redecessors had been designed Earls in Writs als well between the *Earl* and

Subjects

Subjects, as in the King's Charters and Letters, and in the Rolls of Parliament; his Title is eſtabliſhed by Writs produced, and the Antiquity of theſe Titles is eſtabliſhed by the Antiquity of Writs, and is connected in the Earl's Perſon by the Authority of Services adminiculat in manner foreſaid: So that the Earl's Title does not depend upon meer uſe or cuſtom: and his Precedency is regulated by his Antiquity.

And whereas the Defender further alledges the Authority of *Craig* and *Tyraquellus*, for proving, That Nobility may be acquired by immemorial Poſſeſſion.

It is anſwered in the firſt place, That is not without queſtion; all that *Craig* ſays, *Non negarem Nobilitatem aliquando concedi ex uſu*, &c. And *Tyraquellus*, whom he cites, does ſufficiently ſhow, that the Matter is in queſtion amongſt the Doctors, *& Merito*: For the aſſumption of Titles, without previous Authority, by a Reſcript of the Emperors *Gratian* & *Valentinian*, is declared Sacrilege, *L.* 1. *Cod. Uti dignitatum ordo ſervetur Lib.* 12. *Tit.* 8. The words of the Reſcript are, *Si quis indebitum ſibi Locum uſurpaverit nulla ſe ignorantia defendat ſitque plane ſacralegii reus qui divina precepta neglexerit.* And it being an Ancient Maxim in the Civil Law, deſcending from the Laws of the XII. Tables, *Rei fortivæ æterna authoritas eſto*, which was ſufficient to hinder Preſcription, much leſs could an Uſurpation of a Rank not due to the Defender's Predeceſſors, be a Foundation to acquire any Title of Right, ſeing ſuch Uſurpation was in the conſtruction of Law Sacrilege.

But 2*do*. Without refining, both *Craig* and *Tyraquellus* ſpeak in the places cited, of *immemorial Poſſeſſion*, which is deſcribed to be *Poſſeſſio tanti temporis cujus memoria non extat*, which can never quadrat with the Defender's Caſe, ſeing the Purſuer does document at what time the Earl of *Crawfurd*'s

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Predeceſſors were not Earls, and at what time they begun to be ſo deſigned: So that here is no *poſſeſſio tanti temporis cujus memoria non extat*; for the Earl of *Sutherland* Purſuer, by Documents much more convincing than theſe adduced for the Defender, recals to memory the very beginning of the Defender's Title, and demonſtrats, That it is much later than the Purſuer's: Now the very weight and moment of immemorial Poſſeſſion depends upon this, That there being no poſſibility to aſſign a time when the Dignity did begin, it is preſumed *retro* as old or older than any thing that can be put in Competition with it; but that the Defender cannot alledge.

3*tio*. ALTHO *Craig* and *Tyraquellus* do rather not deny than affirm, that Titles of Honour may be acquired by immemorial Poſſeſſion, yet their Authorities do not concern this Caſe: For granting that the Earl of *Crawfurd*, from his being deſigned Earl, without any other poſitive Conſtitution or Title, had Right enough for him and his Succeſſors to be Earls; yet neither *Craig* nor *Tyraquellus* nor any other Lawier in the World, ever ſaid or dream'd, That in Competition with other Earls, this Poſſeſſion could give him a Precedency to the Earl of *Sutherland*, who demonſtrats his Antiquity beyond the Defender's: So that *Tyraquellus* and *Craig* are nothing to this purpoſe. On the contrary, *Tyraquellus* whom *Craig* follows, does poſitively reject the preſcription of 40 Years, as a ſufficient way of acquiring a Dignity; which is much more prejudicial to the *D*efender's Cauſe, than the Authority adduced for the *D*efender, advances it.

THE *D*efender's Poſition being thus clearly overturned, It falls next to be examined, That ſuppoſing that immemorial Poſſeſſion were an undoubted *modus acquirendi* of Nobility; or that the Earl of *Crawfurd* could pretend to immemorial

morial Poſſeſſion ; whether the Earl of *Crawfurd*'s Evidences to which he appeals, are ſufficient to prove this immemorial Poſſeſſion of being alwiſe called and placed before the Earl of *Sutherland*.

And as to this Matter, *Firſt*, It is to be obſerved, that the Pretence is redargued as to any time preceeding the 1397: Becauſe preceeding that time, there were Earls of *Sutherland*, and that the Family of *Crawfurd* was not Nobilitat.

In the next place, the ancient Rolls of Parliament have certainly periſhed, and thoſe that remain are imperfect. And becauſe there have ariſen many Diſputes concerning Precedency, it is moſt probable, that the Nobility were ranked in the Order they came up to the Parliament, and the Rolls bear for the moſt part *Hic intraverunt*. This is undeniable, that in theſe Rolls there is no regard had to Antiquity, nor even to Order; for ſometimes Earls are ranked before Dukes, altho the Title of Duke was always counted the more honourable, and was beſtowed as an addition of Honour upon Earls, and truely only upon the Royal Family at the beginning. Sometimes Earls are ranked, even before the Chancellor, being an Earl for the time : Sometimes the Suffragant Biſhops are ranked before the Primate; Sometimes *Earls* undoubtedly poſterior in Antiquity, are placed firſt, and Earls much later than either *Crawfurd* or *Sutherland* are placed before them. But it is ſpecially to be obſerved, that in all the Rolls where the Earl of *Sutherland* and *Crawfurd* are mentioned together, there occurs ſuch Diſorders : And this immemorial Poſſeſsion as to the Earl of *Sutherland* has no other *Evidence* for the Defender but one inſtance, where the Earl of *Rothes* is called before *Crawfurd*, and the Earl of *Sutherland* is called next Sederunt before *Rothes*. But in a word,

the Ancient Rolls have marked in the Margin theſe words, *hic intraverunt*, as has been ſaid, which ſhows that the Nobility were marked as they entred the Parliament Hall, without regard to their Antiquities, or even the Deſtination of Orders.

THIS Expedient was followed, to prevent the Quarrels for Precedency, which, as the Decreet of Ranking bears, was ſo great, that thereby there was greater Matter of impeachment offered to the States to compone their Difference, than to treat upon the principal Subjects for which they were aſſembled. And the Creation of certain new Peers, and erection of new Dignities, (till then, little known in *Scotland*,) having quickned the Jealouſie and Debates among the Nobility, for their Precedency and Place, King *James* VI. granted a Commiſsion in the 1605, for making an Order to take place, until it ſhould be overturned by a Proceſs before the Judge Ordinary.

THIS being the State of the Rolls of Parliament, and which are in the laigh Parliament Houſe, nor can the Matter of Fact be conteſted; what Argument or Authority can the Earl of *Crawfurd* derive from thence for eſtabliſhing an Immemorial Poſſeſsion of Precedency? Is it the frequency of his being called in the Rolls before the Earl of *Sutherland*? That cannot be alledged, nor in any Reaſon founded upon a ſingle Inſtance, or two at moſt, and from thence to infer immemorial Poſſeſsion, were abſurd: Is it from the exact Order obſerved in theſe Rolls, according to the Antiquity of Dignities? Neither can that be pretended, as has been already ſaid, and the printed Rolls ſubjoined will prove it, conform to the Extracts from the Records: Is it from the continued Series of theſe Rolls, and from their fulneſs? Neither can that be alledged for the Defender, the Rolls of ſeveral Parliaments are amiſsing, the Rolls that are extant are imperfect: So

that

that theſe afford no Document or Evidence for this imaginary immemorial Poſſeſsion.

Nor are the Records of Council, wherein the Sederunts are marked, of any greater Force; for the ſame Irregularities occurs in marking the Sederunts of Council: But ſince the Defender does ſo peremptorly require one Inſtance, where the Earl of *Sutherland*'s Predeceſsors had Precedency of the Earls of *Crawfurd*, the Purſuer condeſcends upon a Sederunt of Council 26 *May* 1572, where the Council is ranked in this Order.

Joannes Dominus regens.
Alexander Comes de *Sutherland*,
David Comes de *Crawfurd*.
Gulielmus Dominus *Ruthven*
Patricius Dominus *Lindſay*
Robertus Dominus *Boyd*.
Allanus Dominus *Cathcart*.
Epiſcopus Orchadenſis.
Commend. de *Dumfermling*.
Alex. Commend. de *Culroſs*.

From what is above ſaid, the Purſuer hopes your Lordſhips may perceive how little the Alledgance of Immemorial Poſſeſſion does quadrate to this Caſe: And indeed granting that immemorial Poſſeſſion could give the Earl of *Crawfurd* Right to that Precedency; yet he is not able to prove it.

But ſtill beſides all theſe Defects, an immemorial Poſſeſſion, unleſs it be uninterrupted, is no Ground or Foundation of any Right: But the Defender's immemorial Poſſeſſion is not quiet or uninterrupted; The Earl of *Sutherland* had the Precedency of him in Council 1572. The Decreet of Ranking narrates, That at all Meetings and general Councils, the Contentions which lay unremembred till then, were agitated with great Animoſity: And it is preſumable, that the Earl of *Sutherland* did not neglect his own Precedency on theſe occaſions, eſpecially ſeeing he never neglected his Title

as *Earl*: Nay he did not omit to have his Antiquity, as deſcending from *William* Earl of *Sutherland*, who lived in the time of King *David* II. recognized by King *James* VI. himſelf in *Anno* 1601; and that ſhortly before the Decreet of Ranking, which alone is ſufficient to preſerve the Earl's Title againſt this pretended immemorial Poſſeſſion: For the King being the Fountain of Honour, without whoſe Conſent (preſumed at leaſt) no immemorial Poſſeſſion would eſtabliſh any Title of Precedency or Dignity as *Tyraquellus* in the place cited by the *D*efender himſelf aſſerts from the Authority of Lawiers and *D*octors; The *E*arl of *Sutherland* having applyed to his then Majeſty, and obtained his Antiquity acknowledged, it was a ſufficient Interpellation to preſerve againſt any ſuch hazard, eſpecially ſeeing what his Majeſty there aſſerts, is ſo clearly aſtructed.

AND in the next place, the immemorial Poſſeſſion is interrupted by the *D*ecreet of Ranking, not only in ſo far as it narrats conſtant Conteſts, but alſo in ſo far as it reſerves all Parties Rights.

To conclude therefore: The immemorial *P*oſſeſſion, whereby the *E*arl of *Crawfurd* pretends to have acquired the Right of *P*recedency beyond his own Antiquity, and undenyably to the prejudice of the *E*arl of *Sutherland*'s Antiquity, wounds common Senſe in the *P*roposition, and is defective doubly in the *P*robation, ſeeing neither does the Earl of *Crawfurd* offer the leaſt probable Ground of *E*vidence for inſtructing a continued *P*oſſeſſion uniformly and pregnantly thereby: Neither does there want conſtant *E*vidence, that the *E*arl of *Sutherland* did poſſeſs his Title and *D*ignity of *E*arl and aſſerted his Antiquity. So that there is neither *adjectio per continuationem poſſeſſionis*, which is called a poſitive *P*reſcription. Nor can it be urged, that there was any *D*erelict

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on the part of the Earl of *Sutherland*, which makes the Negative Preſcription.

And whereas the Defender alledges, That the Purſuer cannot ſhow that he has claim'd the Rank or Precedency of the Earl of *Huntley* ſince the 1514. It is anſwered, That this is alſo nothing to the purpoſe: For *eſto* the Earl of *Sutherland* had ceded out of reſpect to the Earl of *Huntley*, who had the Precedency of the Earl of *Crawfurd*, will that give the Earl of *Crawfurd* a Title of Precedency? *nullo modo*. Beſides the Earl of *Sutherland* might plead an excuſe for a particular reſpect to the Earl of *Huntley* from what is alledged by Sir *George Mackenzie* from *Gothofried* in his Queſtions concerning Precedency *Queſt.* 7. *viz.* "In *Germany*, if the "Chief of a Family come to a Dignity equal to one of his "Kinſmen, who formerly enjoyed that Dignity, he will be "preferred to him, tho his Kinſman did firſt attain to the Di-"gnity. This Exception (ſays Sir *George*) ſeems to be "founded upon the Right of Blood, to which thoſe of the "ſame Family give that reſpect as to an elder Brother: "But tho thoſe of the Family may give this reſpect out of "Favour, yet in Law they are not thereto obliged. And this (*eſto Argumenti cauſa* the Alledgance was true in Fact) was the Caſe of *Adam Gordon* and his Children, with reſpect to the Earl of *Huntley*, who was Chief of the Family and Name of *Gordon*: But ſuch Deference (if ever any was) was precarious and without any legal Tye; and therefore can afford no Argument to the Earl of *Crawfurd*. And in the next place, the Fact is intirely denied; nor is the Earl of *Sutherland* bound to prove, that he took the Rank of the Earl of *Huntley*: And it is *jus tertii* for the Earl of *Crawfurd* to prove the contrary: Neither can the ſtate of that Queſtion now be known after a 100 Years: For during that time the Family of *Huntley* has had the Title of Marquis and Duke; and there was no place for any Competition.

And

And whereas the Defender further alledged, That it is presumed that the Commissioners when the Decreet of Ranking was pronounced, certainly had before them such Evidents as were sufficient to discover the defects of the Pursuer's Title, and the Grounds of the Defender's Preference. It is answered, That the Decreet of Preference founds not the least presumption, either in prejudice of the Earl of *Sutherland* or to the Defender's Advantage, that Decreet being only an expedient for the *Interim*, as will more plainly appear afterwards.

For whereas it is pretended, That the Decreet of Ranking is pronounced by Commissioners specially authorized by the then King, and was *res judicata*.

It is answered, That the foresaid Decreet was only a Regulation for that *interim*, and to preserve peace, which was competent to His Majesty to have done: But it is ridiculous to pretend, that is *res judicata* or a final Sentence; seeing, *First*, It is not pronounced by a Judge ordinary, or by any Judicatory established by Law. *2do.* It does not proceed at the Instance of any of the Parties concerned. *3tio.* The Certification of the Summons given to several Noblemen to compear, is in these precise words: *That the determination of the Commissioners shall stand in full force and effect, ay and while a Decreet before the ordinary Judge be recovered and obtained in the contrary.* And the Decreet could never go beyond the conclusion of the Libel; neither could such a Libel produce a final Decision or *res judicata*; nor indeed could it have any other effect, but to be a Regulation for the *interim*, until the Questions were tried upon the Antiquity of the Rights and Documents of all Parties, to which the foresaid Decreet appeals as the only Rule of Decision; for the Conceit of immemorial Possession was not then found out.

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But few of the Defender's Procurators did inſiſt upon the Ground, That the Decreet of Ranking was *res judicata*, but alledged ſeparatly, That it was a Title of Preſcription.

To which it was, in general, Anſwered, *Firſt*, That *Craig* and *Tyraquellus*, whom the Defender cites, do not admit of any other way to eſtabliſh and acquire Right in Matters of Dignity through the courſe of time, except by immemorial Poſſeſſion: And *Tyraquellus* his Words are, ſpeaking of *Alberitus*'s Opinion concerning the long Preſcription of 40 Years, whom he had immediatly cited, and whoſe Words he reports, *Sed videtur quod Nobilitas & Dignitas precedat à natura, ex quibus potes intelligere eum ſentire Nobilitatem, tempore non preſcribi.* And then *Tyraquellus* adds, *Quod ſemper intelligere debes, niſi tempore illo immemoriali.* And this is moſt conſonant to the Principles of Law and Juſtice, whereby it is received as a Rule, *Jura ſanguinis nullo jure Civili dirimi poſſunt, l. 8. ff. de reg: juris.* Neither can any Cuſtom give the Right of Blood; and therefore neither could the Earl of *Crawfurd* by Preſcription acquire any Right of Precedency which was not competent to him by the quality of his Patent: Nor could Preſcription, which is the effect of Civil Law, hinder the Earl of *Sutherland* from any Benefit of Honour he can derive from the Blood of his Anceſtors.

And the Lords are intreated to conſider, That the Preſcription urged for the Defender, is of a very new kind: For the Earl of *Crawfurd* neither does nor can pretend, that he has acquired a Title to the Earl of *Sutherland*'s Right, which could not be otherways than by preſcribing a Right to be Earl of *Sutherland*. Now if the Earl of *Crawfurd* has not acquired that Right, then it is free and open to the Earl of *Sutherland* to uſe it with all its Privileges.

And as the Earl of *Sutherland*'s Title and Precedency cannot be the ſubject of a poſitive Preſcription; ſo neither can there be any negative Preſcription pretended in this Caſe: For from the beginning of the World to this day, a negative Preſcription was never opponed but by a Party in poſſeſſion. It is true, the negative Preſcription, joined with a preſent Poſſeſſion, has been founded on as ſufficient to exclude a good Title, where there had been 40 Years preceeding Negligence, without the neceſſity of ſhewing a Title in the Defender's Perſon, or that he had poſſeſſed 40 Years; and even that has been contraverted, and is *ſub judice*, in a Caſe betwixt *Thomas Nicol* and *Park* of *Foulfoordlees*: But this is certain, that the negative Preſcription was never alledged but by a Party in poſſeſſion. Nor is it leſs certain, the Earl of *Crawfurd* cannot pretend to be in poſſeſſion of the Dignity of *Sutherland*, whereof the Precedency is, *proprium quarto modo*, which agrees to the Earl of *Sutherland ſoli & ſemper*, and can as little be ſeparated from his Antiquity, as the Shadow from the Body.

And as the Defender cannot acquire by Preſcription the Earl of *Sntherland*'s Right; ſo the Earl of *Crawfurd* can have no manner of Injury by the Earl of *Sutherland*'s poſſeſsing the Precedency due to the Antiquity of his Titles; for thereby he takes nothing which ever did or could belong to the Earl of *Crawfurd*.

Neither will it ſeem ſtrange to your Lordſhips, that Precedency, or Titles of Honour, ſhould not be acquired by Preſcription, ſuch Rights being *Jura ſanguinis*, and not in *commercio*, as was found in the famous Deciſion of the Lord *Oliphant* fore-cited, where the Lords found, *That Titles of Honour could not be diſpon'd*. And it is a common *Requiſite* by

by the Lawiers treating (upon the Queſtion, *Quæ res præſcribi poſſunt?*) That *res quæ non ſunt in commercio*, cannot be acquired by Preſcription.

And in like manner, by our Cuſtum, no Man by a Poſſeſſion of whatever length, can acquire an ~~Annuity~~ from Teinds, unleſs he had his Lands *cum decimis incluſis*, which is becauſe the Teinds were not *in commercio*; that is, That no Man could acquire the Church's Right thereto: Nor was there any way to have a Right to the Teinds, unleſs the Diſtinction of the Laity and Clergy had been confounded: And for the very ſame Reaſon, neither can the Earl of *Crawfurd* by whatever length of Poſſeſſion, diſpute the Precedency due to the Earl of *Sutherland*, ſeeing his Title and Dignity was not the Subject of Commerce, nor could be enjoyed by any, but ſuch as had Right to it by Blood. And it is as abſurd for the Earl of *Crawfurd* the Defender, to pretend to debar the Earl of *Sutherland* from his Precedency, as it would be to debar him from ſerving Heir to his Predeceſſors, the one being as much his Right by Deſcent, as the other.

But 2*do*. There can be no Preſcription alledged in this Caſe, becauſe Preſcription does not take place by the Law of *Scotland*, but where it is introduced by expreſs Statutes: Nor can Titles of Honour fall under any of the Acts concerning Preſcription. The Defender did indeed found upon the Act of Parliament anent the Preſcription of real Rights; but the words of that Law do not comprehend it, *viz. Whoſoever of his Majeſty's Leiges their Predeceſſors and Authors have bruicked heretofore, or ſhall happen to bruick in time coming, by themſelves, their Tenants and others having their Rights, their Lands, Barronies, Annualrents and other Heritages by vertue of their Heritable Infeftments made to them by his Majeſty or others their Superiors and Authors, for the ſpace of* 40 *Years, they*

ſhall never be troubled, purſued or unquieted in the Heritable Right and Property of their ſaids Lands and Heritages foreſaid. All which Clauſes do expreſly relate to Rights of Lands, but not to ſuch Rights as are *Sanguinis.*

And it is in vain for the Defender to alledge, That *jura incorporea* are ſubject to Preſcription, ſuch as Servitudes: For that does not at all quadrate with this Caſe, ſeeing all Servitudes have a Poſſeſſion, or a *quaſi* Poſſeſſion of the Subject upon which they are eſtabliſhed: But the Earl of *Crawfurd* can pretend no Poſſeſſion or *quaſi* Poſſeſſion upon the Earldom of *Sutherland*: Neither are *jura incorporea* Servitudes to be compared with *jura ſanguinis, quæ nullo jure Civili dirimi poſſunt*, and conſequently not by Preſcription, which is *juris Civilis.*

But 3*tio.* The Defender can found no preſcription upon the Decreet from the ſaid Act of Parliament, anent preſcription of Heritable Rights, becauſe that Law requires for a Title, Charters or Saſines before the 40 years: And however the Earl may alledge Charters or Saſines of his Earldom of *Crawfurd*, yet he can produce no Charters or Saſines for a Precedency ancienter than his moſt ancient Documents. And as by our Law, and the Civil Law, a Man having a bounded Charter or *Ager-Limitatus*, could not preſcribe beyond the Bounds of his Charter; ſo neither could the Earl of *Crawfurd* preſcribe any Precedency beyond the Antiquity of his Documents, which do as ſtrictly regulate Precedency, as bounded Charters do confine Property; but the abſurdity of this pretended Preſcription appears clearly from this: It cannot proceed without a Title; let then the Earl of *Crawfurd* ſhow what the Title is: Not his Documents proving his Antiquity; for theſe can carry him no higher than the ancienteſt date: Not this Decreet of Ranking, for it is in no

Gram.

Grammar nor Propriety of Speech, a Charter or Saſine: Beſides, it is ridiculous to imagine, that any Party ſhould have one Title for the Preſcription of his Dignity, and another of diſtinct kind for a Title to preſcribe the order of his Precedency, which is but acceſſory to that Dignity.

4*to*. The Earl can pretend to no Preſcription in this Caſe: For if he found his Right upon the Immemorial Poſſeſſion, it has been already redargued; neither can he prove any continued Poſſeſſion for 40 years, preceeding the Act of Parliament: Eſpecially ſeeing in *May* 1572, the Earl of *Sutherland* had the Precedency in Council of the Earl of *Crawfurd*. And in the 1601, the Earl of *Sutherland*'s Antiquity was acknowledged by King *James* VI. Likeas the Ranking it ſelf was a general Interruption, where all the Parties compearing claim their Precedency, altho their Rights neither did nor could follow any ſuch Sentence. And it is obſervable, that in the Decreet of Ranking the Earl of *Sutherland* is twice mentioned before the Earl of *Crawfurd*, both in the Clauſe anent the Charge given, and in the Compearance: And the reaſon why the Earl of *Sutherland* was then diſpoſſeſt of his place, was, becauſe he was *Popiſh* and abſent, and little concerned what Rules were made concerning general Councils, or Contentions; eſpecially ſeeing the Decreet of Ranking did contain a *Salvo*, which was an effectual Interruption as to all Parties. And indeed it is ſcarcely conceivable, how a Preſcription ſhould be founded upon ſuch a Decreet, where the *Salvo*, like a Reverſion, does perpetually qualify the Right: And it is a Principle, That no Man can preſcribe againſt the Nature and Quality of his own Right.

But now granting this Decreet could be the Title of a Preſcription, this Preſcription could only run from the 1617, and for fourty years forward. And, *ita eſt*, in that 40 years,

1*mo.* there is a Summonds and Interruption raiſed in *Anno* 1630. 2*do.* There is a Proteſtation taken in the Parliament 1641, as by the Liſt of the unprinted Acts of that *P*arliament does appear, which Parliament began 1639. 3*tio.* The Earl of *Crawfurd* cannot be ſaid to have poſſeſt 40 years, becauſe in the Parliaments from the 1640 to the 1648, the Earl of *Sutherland* ſat and had precedency of the Earl of *Mariſchal*, one of the Lords ranked before him by the Decreet of *R*anking; which was an aſſerting his *R*ight againſt the Decreet, and which is proven by the 9th Act of Parliament 1644, intituled, *Commiſſion for the* Northern *Buſineſs*; wherein *John* Earl of *Sutherland* is expreſly named *Commiſſioner*, before *William* Earl of *Mariſchal*. 4*to.* In the *P*arliament 1647 the *E*arl of *Sutherland* proteſted for his Precedency, as an Extract of his Proteſtation bears: And this being a Judicial Act at Calling the *R*olls of Parliament, was a moſt ſolemn Interruption; likeas the Earl did in the Year 1661 renew his *P*roteſt, as an Extract thereof in Proceſs likewiſe bears; and ſince that time there is not any pretence of *P*reſcription.

And whereas it was replyed by the Defender as to the Interruptions, 1*mo.* That no regard to the Interruptions, unleſs they were within 13 years to the Act of Parliament 1617, ſeeing the Defender had before the Act enjoyed the Precedency 40 Years: And the Citation in *Anno* 1630 cannot be regarded, being only to the firſt diet. 2*do.* *Eſto* it had been to both the diets; yet not being renewed every ſeven Years, falls by the Acts of Parliament 1669 and 1685, concerning Interruptions. 3*tio.* No regard to thir Proteſtations taken in Parliament, becauſe theſe are but Matters of courſe.

It was duplied for the Purſuer, That ſeeing the Precedency was not the ſubject of a Preſcription, he needed be at little

ſittle pains to clear his Interruptions: But that the Lords and the whole World may be fully ſatisfied, how weak in all reſpects the Defender's Caſe is, and that there is not the very Shadow of a Pretence upon his part; The *Earl* of *Sutherland* does in the firſt place hope, that the Defender will not conteſt with him, that what has been found Law and Right in other Caſes, will be found ſo in This.

AND, 1*mo*. If the Defender compute his Preſcription from the Act of Parliament 1617, as he needs muſt, for there is not any Law for preſcription of Heritable Rights in *Scotland* before that time; the Earl's Interruptions are clear and poſitive, *viz.* Proteſts taken at the Meetings of Parliament, inſert in the Books of Parliament, which is the higheſt Judicatory; and that in the Year 1641, 1647, 1661 and downward.

AND to pretend, that theſe Interruptions are Matters of Courſe, is a pitiful ſhifting of the Argument: Can any Lawier diſpute, that the moſt ſolemn judicial Acts, altho they paſs of courſe, yet are Interruptions? What time more proper for ſuch Interruptions, than at the Meeting and Calling of the Rolls of Parliament, where all *Parties* concerned are preſent, or bound to be preſent? What place more proper, or what Act more congruous, or ſuitable to aſſert the Proteſter's Right, and draw in queſtion the Precedency of his Competitor? What *Practice* more conſtantly uſed? The Noble Families in the Nation are ſtrangely deluded, if after all the Proteſtations taken at the uſual Meetings in *Parliament*, moſt deliberatly adviſed by the beſt Lawiers in the Kingdom, at all times, do not import Interruption for preſcribing their Rights and *Pretenſions*. But if the Earl of *Crawfurd* complain, that theſe *Proteſtations*, not being followed, he ought not to be at uncertainty, it is eaſily anſwered, that this Argument cuts

off

off all Interruptions *via facti*, which yet neither did ever any Lawier plead, nor is it poſſible that any Court of Juſtice could have ſuſtained: For if the *D*efender were impatient to have the queſtion determined, he might have raiſed a *P*roceſs againſt the Earl of *Sutherland* to inſiſt, with Certification not to be heard in time coming, or he might have declared his own Right and Precedency by way of Proceſs.

But if the *D*efender compute his *P*reſcription after this manner, *viz.* As having poſſeſt 40 Years before the Act of *P*arliament 1617, and that there was no legal Interruption within the 13 Years from the ſaid Act of Parliament; The Purſuer replies, That the *D*efender errs both in Law and Fact, which is ſo obvious, that cannot ſo much as afford a weak Pretence for an Act: For by what Means ſhall this be proven? By Witneſſes? I hope before the Year of God 1617, no body will pretend it, ſeeing the Witneſſes muſt depone upon 40 Years preceeding Knowledge. There remains but another way, and that is the Rolls of *P*arliament, Councils, *&c.* Theſe are at hand; and what they can import has been already cleared, and how weak theſe *P*retences are, for founding a continued *P*oſſeſſion, being irregularly kept, and containing no ſuch frequency or uniformity of Acts as can either eſtabliſh or deſtroy a Right.

2*do.* Any imaginary anterior *P*reſcription, was interrupted by the Charter 1601, wherein the King, who is the Fountain of Honour, acknowledges the Deſcent of the Earl of *Sutherland* from *William* Earl of *Sutherland*; which being within the 40 Years of the Sederunt of Council 1572, takes off all pretence of a Preſcription of 40 Years preceeding the Act of Parliament 1617; eſpecially ſeeing ſuch Preſcriptions are not preſumed, but ought to be pregnantly proven, as has been ſaid.

3*tio.*

3*tio.* The pretence of a 40 Years uninterrupted Poſſeſſion, preceeding the Act of Parliament, is ridiculous, ſeeing the Defender pleads the *D*ecreet of Ranking as a Title of *Pre*ſcription, which is but eleven Years older than the Act of Parliament, and which was a ſolemn Interruption, and indeed was the firſt Rule for eſtabliſhing of Rolls, as to any Man unbyaſs'd will appear on reading that Decreet as it is Printed by Sir *George Mackenzie*, in which the Earl of *Sutherland* is named before the *E*arl of *Crawfurd*, both in the Libel and Compearance; and wherein the Purſuer's Predeceſſor is alſo compearing by his Procurator, & wherein his Right and the Right of every Perſon is reſerved: And therefore the Preſcription muſt be computed (if any could be) by compting 40 Years from the Act of Parliament 1617: In which time the foreſaid legal Interruptions do undoubtedly occur.

But, 4*to. Eſto, Argumenti cauſa,* That the *D*efender could found upon the Preſcription of 13 Years mentioned in the Act of Parliament 1617, concerning ſuch Rights which had been poſſeſt 40 years uninterrupted preceeding the ſaid Act: Yet this will not exclude the Purſuer's Right; becauſe of the Summons and Citation in *May* 1630.

And whereas the *D*efender anſwers, That this *S*ummons was only execute to the firſt *D*iet. It is duplyed for the Purſuer, that the Objection is frivolous: For no man can deny, that the intenting of a Proceſs within the laſt day of 40 years, is and was always held as an effectual Interruption: For a Man cannot be ſaid to neglect his Right, who intents Action within the 40 years; but ſo it is, that in *Anno* 1630, there could not be a Citation upon the laſt day of the 40 years, but by a Summons to the firſt Diet; and therefore, if an Execution to the firſt *D*iet were not ſuſtained in that Caſe, then it would follow, That a Citation within the 40 years, did not interrupt.

But

But for clearing this further, the Lords would be pleased to consider what has been done in other Cases, *November* 25th 1665. *White* contra *Horne*; The Lords sustained the Execution of a Summonds sufficient to interrupt, albeit there were defects in the Executions: And if a null Execution can prescribe a Right, which in the Construction of Law is none at all; only because of the odiousness of Prescription, and the implied Will of the Pursuer not to relinquish his Right, *multo magis* ought a Citation to the first diet. And conform to this, a Process intented at the Instance of an apparent Heir was sustained as a Prescription, altho he died before Service, and altho Apparency was not a compleat Title to have pursued the Action.

But the Case it self is decided *in terminis*, and that oftner than once, 4 *March* 1630, Lord *Lesly* contra where a Summonds of Spuilzie being intented *debito tempore*, but having lain over without Continuation, Calling or Wakening for 22 Years, was alledged to be prescribed; The Lords *in terminis* found, *That the lying over of the Cause being once intented lawfully, made it not fall under Prescription.* And this was in a Case where Prescription was more favourable, *viz.* In a Process of recent Spuilzie, which is penal: And therefore unless the Action be intented in Three Years, it prescribes. The like was done *in terminis*, 17 *February* 1665, *Butter* contra *Gray*. 9 *January* 1675, *McIntosh* contra *Frazer*.

And if such uniform Decisions, for so great a length of Time, do not establish our Law, to what Rule shall we next turn our selves?

But still the Defender urges, That this Interruption was by a Summonds execute indeed, but not libelled. To which the Pursuer only oppones his Libel, very distinctly and fully libelled

libelled by the Advice of the Learned Sir *Thomas Hope*, one of the Greateſt Men at that time, or ſince.

And whereas the Defender further urges, That this Interruption being by a naked Citation, is fallen, unleſs it had been renewed conform to the Act of Parliament 1669 and 1685.

It is anſwered, 1*mo*. That neither does the Act 1669 nor the Act 1685, anent Interruptions, concern this Caſe, being only as to Interruption of Lands or perſonal Rights; neither of which comprehends *Jura Sanguinis*, which falls not under the common acceptation of perſonal Rights; and not being properly Rights of Perſons, but of Families, therefore were called *Jura Gentilitatis*.

2*do*. There was no neceſsity to waken this Summonds 1630, neither can it fall by the Acts of *P*arliament 1669 and 1685, becauſe theſe Laws did regulate only the Caſe where Preſcription was interrupted by a naked Citation: But here the Purſuer's Interruption is not only by a naked Citation, but alſo by his Proteſtations taken in Parliament, and his Proceſſes ſince: So that the preciſe Anſwer is, That the *Pre*ſcription being once interrupted by the Summonds in the 1630, the Purſuer's Right was continued by the ſubſequent Proteſtations; as alſo the Defender's pretended *P*oſſeſſion and Right, was thereby interrupted: And the Right it ſelf being thus interrupted, no Action depending upon the Right could fall: As put the Caſe, that a Man having a true Title to produce an Action in his *P*erſon, Intents an Action by another Title, which was null, the Citation by vertue of that null Title would be ſufficient to interrupt, as was found *July* 26th 1637, the Laird of *Laars* contra *Dumbars*; and much rather ought an Interruption by a Proteſtation pre-

ſerve the Summonds, both being founded upon the very ſame Right.

But 3*tio*. It is plain the Act of Parliament 1669 did not concern this Caſe, becauſe it regulats only Citations for Interruption in time coming; neither does the Act of Parliament 1685 do the Buſineſs: For compting ſeven years from *June* 1685 when that Parliament was adjourned, or from the promulgation of the Laws, the ſeven years does not run till *June* 1693, deducing the Year for the Surceaſe of Juſtice, eſpecially, if to that, be alſo added the Adjournments of the Seſſion from the 6th of *June* 1690 to the 2d of *July* thereafter: So that the Interruption by the Citation ſtands unqueſtionably good, notwithſtanding of theſe Laws, ſeeing the Purſuer's Father applied to the Parliament for a Warrant to cite, and obtained a Remit, *May* 1693, which is the immediat Foundation of this Proceſs.

But all this Debate concerning Interruptions may juſtly ſeem ſuperfluous, ſeeing the Earl of *Sutherland* never having abandoned his Title of Earl, did by the Poſſeſſion of the principal Right preſerve all Acceſſories: And is in a much ſtronger Caſe than that decided *December* 18 1667. *Nicolſon* contra *Filorth*, where the receiving of Annualrents from a Principal was found to interrupt as to the Cautioner; for the Precedency is an Acceſſory far more neceſſary and inſeparable from the Earl's Antiquity and Dignity, than the obligation of a Cautioner, is to that of a Principal. And the Purſuer is in a much ſtronger Caſe yet, than that decided the 22d *June* 1671. Lord *Balmerino* contra *Little Preſton*; where the Lords found, That the poſſeſſion of an Annualrent out of a Tenement, hindred the Right to preſcribe as to another Tenement, albeit that Tenement had been poſſeſſed by a ſingular Succeſſor for more than 40 years.

The Earl of *Sutherland*, after so long an Information, shall only add, That he cannot but think it a Misfortune for the *D*efender's Cause, that seing the Titles which he enjoys, and which the *P*ursuer is very unwilling to contest with him, are indeed very honourable; It ought to have satisfied the Defender to have enjoyed the Precedency that he could in any shew of Reason claim, as belonging to the eldest Earls of *Crawfurd*, without grudging the Pursuer the just *P*recedency due to his Antiquity and Title. And the whole World, considering the Matter without *P*assion or Interest, must needs be surprized, that the Earl of *Crawfurd* should endeavour to pluck up one of the best established Rights in the Kingdom. And if the *P*ursuer may be allowed to say what is necessary for his Cause, it is certain, that the Ancient Nobility is a part of the Glory of the Country; and the *P*ursuer hopes, that without vanity he may own, That few (if any) can shew such Ancient Documents of their having been amongst the first *P*eers of *Scotland*: And therefore it is in some measure a prejudice to the Honour of the Kingdom in general, for maintaining of an usurped *P*ossession always quarrelled, to intercept betwixt the Earl of *Sutherland* and his Ancient *P*redecessors.

And the Pursuer is very well assured, the Lords will be the more tender of his Case; because the Decision in this Question betwixt the Earl of *Crawfurd* and him, will in the *E*xample concern the Precedency of the Kingdom it self. Have not Strangers injuriously contested the Descent of our Princes from their Ancient and Illustrious Ancestors? Have not our Princes changed the Names of the Royal Family? Is it not certain, that for many Years the publick Ministers for this Kingdom have not appeared in Processions with Foreign Princes or their Ministers? And are not these the very Substance of my Lord *Crawfurd*'s Defence against the Earl of *Sutherland*? And if sustained by a solemn Sentence of the Lords

of Seſſion upon a Remit from the Parliament, it is too obvious what prejudice the Nation in general might ſuffer by it.

Seeing therefore, the Earl of *Sutherland* has not only clearly inſtructed his Deſcent from the Ancient Earls of *Sutherland*, but has alſo demonſtrat, that for upwards of 150 Years after, The Earl of *Crawfurd*'s Predeceſſors had not the Title of Nobility; And ſeeing alſo, the Earl's Claim to his *P*recedency is the inſeparable Conſequence of his Right, and that he is founded on Antiquity, the unqueſtionable Rule of Precedency; And further, ſeeing, that what is offered for the *D*efender, is partly conſtrained Exceptions againſt a clear following of Rights and Titles; And partly a vain pretence to an immemorial Poſſeſſion, neither founded in Reaſon, nor having the leaſt Authority from Records, or from Hiſtory; And partly the Decreet of *R*anking, which in it ſelf contains a perpetual Proteſtation, and is a Demonſtration, that there was neither formal *R*olls, or *R*ule before; And ſeeing laſtly, any pretended Poſſeſſion has been perpetually quarrelled; And that now the Earl does inſiſt for a plain and neat *D*eciſion in point of *R*ight; He expects, and claims that your Lordſhips will by your *S*entence, eſtabliſh and declare his Precedency, which is as much his Right, as being of the Blood and Deſcent of his Ancient Anceſtors, as the *E*ſtate of *Sutherland*, which he poſſeſſes and derives from them.

ADDENDA to the Earl of Sutherland's *Information.*

PAge 35. *Lin.* 15. add, Which is further cleared by the Definition of Homage we find in Sir *John Skeen*'s Book *De verborum ſignificatione*, viz. *Homagium dicitur quando aliquis promittet ſe eſſe hominem alicujus domini & ſtare & habitare, ubi voluerit dominus. Et ſuper hoc facit homagium, id eſt promiſſionem, ut ſit ſuus homo. Vel homagium dicitur fidelitas hominis pro rebus temporalibus facto domino.* And under the ſame word he obſerves, That Homage differs from Fidelity, by reaſon of the Perſons makers thereof: For Women makes no Homage, but only Fidelity. And he alſo obſerves, That Homage was a more ſubmiſſive Form of Fidelity, whereby the Party doing Homage, became a Liege-man to the King, in Lands, Lith, Life and Limb, Worldly Honour, *&c.* From all which it is evident, that the Husband doing Homage, did certainly participat of the Fee and Privileges thereof; and that not by any Patent, but by the Diſpoſition of Law, as appears by the Books of *Regiam Magiſtatem* above cited.

Addenda, Page 50. *after the* 4*th. Line.* Tho what is above be clearer from the Rolls, than to need further Authority; yet

yet the Purſuer begs leave to add one Inſtance, which is Queen *Mary*'s Commiſſion for printing the black Acts, dated the *1ſt. May* 1566, where the Commiſſioners that were of the Nobility, are ſet down, without any regard to their Antiquities or Precedency. As for inſtance,

George E. of *Huntly* Chancel.
Archbald Earl of *Argile*,
James Earl of *Murray*.
James Earl of *Bothwel*.
John Earl of *Athol*.
William Earl *Mariſchal*.
John Earl of *Marr*.

where *Bothwel* is placed after *Murray*, *Athol* after both, *Mariſchal* and *Marr* after all three, which was a plain inverſion almoſt in every ſtep of the Order of Precedency, and is a concurring Teſtimony, that before the 1606, there was no fixt Rule; and that the Contentions about Precedency were in all Inſtances omitted till Meetings of Parliament, or general Councils, and that in theſe for preventing Diſputes, the Peers were ranked *ut intrarunt*.

FOR Clearing what is ſaid concerning the Three Services of *John* Earl of *Sutherland*, *Anno* 1630, in the end of 15. page, and afterwards. The Names of the Inqueſt are,

Simon *Lord* Loyat
Hugh *Maſter of* Lovat
Sir Thomas Urquhart *of* Cromarty
Hugh Urquhart *of* Ledderies
Robert Dunbar of Burgie
George Mackenzie *of* Kildin
Robert Leſly *of* Findraſſie
Alexander Dunbar *of* Grange
James Sutherland *Tutor of* Duffus
John Monro *of* Oſpſdale
John Mackay *of* Dalret
Angus Mackay *of* Bighouſe
Hugh Roſs *of* Towie
Robert Monro *of* Aſſint
John Monro *of* Lamblair, &c.

In the *Firſt* Service, the ſaid Earl is Served to *William* Earl of *Sutherland*, Great Grand-father's Grand-father to *Nicolas* Earl of *Sutherland*, Great Grandfather Grandfather, or Attavus to *Alexander* Maſter of *Sutherland*, who was Abavus to *John* then Earl of *Sutherland*; and that the ſaid Earl *William* died at the Faith and Peace of K. *Alexander* II.

Before the ſame Inqueſt, the ſaid *John* is Served Heir to *Gulielmus Comes Sutherlandiæ*, *Attavus Joannes Comitis Sutherlandiæ*, *Attavus Joannes Comitis Sutherlandiæ*; which laſt *John*, was Father to the then Earl; and that the ſaid *William* died at the Faith and Peace of K. *David* the 2*d*.

And in this period there is one left out, *viz. John*, to whom *Eliſabeth* Counteſs of *Sutherland* his Siſter, ſucceeded; and *Alexander* Maſter of *Sutherland*, in whoſe Favours Counteſs *Eliſabeth* reſigned in the 1557, is compted, tho he died before his Mother; and *John* his Son, was ſerved Heir to his Grand-mother in 1567.

By the *Third* Retour, the ſaid *John* Earl of *Sutherland*, who lived in the 1630, is ſerved to *John* Earl of *Sutherland*, who is Attavus to *John* Earl of *Sutherland* his Father; and which *John* Earl of *Sutherland*, died at the Faith and Peace of our Sovereign Lord *James* IV.

Theſe Three Services, tho one and the ſame Perſon, was to three different Anceſtors in *recta Linea*, to render the period of the Deſcent ſhorter and clearer, and to evince, That the Inqueſt did proceed not in *groſs*, but upon particular knowledge of the Lineage and Genealogie: And it is certain, that ſome of the Inqueſt, were the moſt knowing of the Antiquities and Genealogies of the Country. And it is further to be obſerved, that one of the Inqueſt is *Mackay* of *Dalret*, who being Heretor of the Lands of *Dalret*, which had been given off by Earl *Nicolas* to a ſecond Son, might derive no ſmall light to himſelf and the reſt of the Inqueſt, from his own Charter-chiſt.